No. 2790

United States

Circuit Court of Appeals

For the Ninth Circuit.

THE UNITED STATES OF AMERICA,
Plaintiff in Error,

vs.

THE SOUTHERN PACIFIC COMPANY, a Corporation,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the Southern District of California, Southern Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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[2*]

In the District Court of the United States, in and for the Southern District of California, Southern Division.

No. 345—CIVIL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation et al.,

Defendants.

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*Page-number appearing at foot of page of original certified Transcript of Record.

Writ of Error.

UNITED STATES OF AMERICA—ss.

The President of the United States of America, to the Honorable OSCAR TRIPPET, Judge of the United States District Court for the Southern District of California, Southern Division, GREETING:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said District Court before you, between the United States of America, plaintiff in error, and the Southern Pacific Company, a Corporation, defendant in error, a manifest error hath happened to the damage of the United States of America, plaintiff in error, as by said complaint appears, we being willing that error, if any hath been, should be corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you if judgment be therein given that under your seal you send the record and proceedings aforesaid with all things concerning the same to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ so that you have the same at San Francisco in the State of California, where said Court is [3] sitting, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, and the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct the error what of right and according to the

laws and customs of the United States should be done.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the United States, this 7th day of March, 1916.

WM. M. VAN DYKE,
Clerk of the United States District Court for the Southern District of California, Southern Division.

By Leslie S. Colyer,
Deputy Clerk.

Allowed this 7 day of March, 1916.

OSCAR A. TRIPPET,
United States District Judge.

I hereby certify that a copy of the within Writ of Error was on the 9th day of March, 1916, lodged in the clerk's office of the said United States District Court, for the Southern District of California, Southern Division, for said Defendant in Error.

WILLIAM M. VAN DYKE,
Clerk of the District Court of the United States for the Southern District of California.

By Chas. N. Williams,
Deputy Clerk. [4]

[Endorsed]: No 345—Civil. In the District Court of the United States for the Sou. Dist. of California, Southern Division. United States of America vs. Southern Pacific Company. Writ of Error. Filed Mch. 7, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy. [5]

In the District Court of the United States, in and for the Southern District of California, Southern Division.

No. 345—CIVIL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation, et al.,

Defendants.

Citation on Writ of Error.

The United States of America, to the Southern Pacific Company, a Corporation, Defendant in Error, GREETING:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, State of California, thirty days from and after the day this citation bears date pursuant to writ of error filed in the clerk's office of the United States District Court for the Southern District of California, Southern Division, sitting at Los Angeles, wherein United States of America is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

WITNESS the Honorable OSCAR TRIPPET, Judge of the United States District Court, this 7 day of March, 1916.

OSCAR A. TRIPPET,
United States District Judge. [6]

[Endorsed]: No. 345—Civil. In the District Court of the United States for the Sou. Dist. of California, Southern Division. United States of America vs. Southern Pacific Company. Citation in Error. Filed Mar. 7, 1916. Wm. M. Van Dyke, Clerk. By A. D. Zimmerman, Deputy Clerk.

Received copy of the within, this 7th day of March, 1916.

HENRY T. GAGE and
W. I. GILBERT,
Atty. for Defendant. [7]

In the District Court of the United States, in and for the Southern District of California, Southern Division.

No. 345—CIVIL.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
Defendant. [8]

In the District Court of the United States for the Southern District of California, Southern Division.

No. 2534

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY,
Defendant.

Complaint.

Now comes the United States of America, by Albert Schoonover, United States Attorney for the Southern District of California, and brings this action on behalf of the United States against the Southern Pacific Company, a corporation organized and doing business under the laws of the State of Kentucky and having an office and place of business at Los Angeles, in the State of California; this action being brought upon suggestion of the Attorney General of the United States at the request of the Interstate Commerce Commission, and upon information furnished by said Commission. [9]

FOR A FIRST CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by

limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 5:00 o'clock A. M. on February 2, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, required and permitted its certain engineer, and employee, to wit, R. N. Richardson, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 5:00 o'clock A. M. on said date, to the hour of 9:50 o'clock P. M. on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train Extra, drawn by its own locomotive engine No. 2784, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars. [10]

FOR A SECOND CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by

limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 5:00 o'clock A. M. on February 2, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, required and permitted its certain fireman and employee, to wit, H. G. Dorrance to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 5:00 o'clock A. M. on said date, to the hour of 9:50 o'clock P. M. on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train Extra, drawn by its own locomotive engine No. 2784, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars. [11]

FOR A THIRD CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by

limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 5:00 o'clock A. M. on February 2, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, required and permitted its certain conductor and employee, to wit, U. G. Gibson, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 5:00 o'clock A. M. on said date, to the hour of 9:50 o'clock P. M. on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train Extra, drawn by its own locomotive engine No. 2784, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars. [12]

FOR A FOURTH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by

limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 5:00 o'clock A. M. on February 2, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, required and permitted its certain trainman and employee, to wit, W. M. Kinkade, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 5:00 o'clock A. M. on said date, to the hour of 9:50 o'clock P. M. on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train Extra, drawn by its own locomotive engine No. 2784, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars. [13]

FOR A FIFTH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by

limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant beginning at the hour of 5:00 o'clock A. M. on February 2, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, required and permitted its certain trainman and employee, to wit, C. S. Courtney, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 5:00 o'clock A. M., on said date, to the hour of 9:50 o'clock P. M. on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train Extra, drawn by its own locomotive engine No. 2784, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars. [14]

FOR A SIXTH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limit-

ing the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1425), said defendant beginning at the hour of 5:00 o'clock A. M. on February 2, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, required and permitted its certain trainman and employee, to wit, Elmer Waitman, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 5:00 o'clock A. M. on said date, to the hour of 9:50 o'clock P. M. on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train Extra, drawn by its own locomotive engine No. 2784, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars. [15]

FOR A SEVENTH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by

limiting the hours of service of employees thereon", approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 3:10 o'clock A. M. on February 27, 1914, upon its line of railroad at and between the stations of Indio, in the State of California, and Los Angeles, in said State, within the jurisdiction of this Court, required and permitted its certain engineer and employee, to wit, Charles O. Wine, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 3:10 o'clock A. M. on said date, to the hour of 8:40 o'clock P. M., on said date.

Amended Oct. 23, 1915, per Min. Ord. Oct. 21, 1915, Leslie S. Colyer, Deputy Clerk.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train Extra, drawn by its own locomotive engine No. 2765, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.

[16]

FOR AN EIGHTH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the

Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 3:10 o'clock A. M. on February 22, 1914, upon its line of railroad at and between the stations of Indio, in the State of California, and Los Angeles, in said State, within the jurisdiction of this court, required and permitted its certain fireman and employee, to wit, P. T. Sherley, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 3:10 o'clock A. M. on said date, to the hour of 8:40 o'clock P. M., on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train Extra, drawn by its own locomotive engine No. 2765, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars. [17]

FOR A NINTH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the

Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 3:10 o'clock A. M. on February 22, 1914, upon its line of railroad at and between the stations of Indio, in the State of California, and Los Angeles, in said State, within the jurisdiction of this court, required and permitted its certain conductor and employee, to wit, U. G. Gibson, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 3:10 o'clock A. M. on said date, to the hour of 8:40 o'clock P. M., on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train Extra, drawn by its own locomotive engine No 2765, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars. [18]

FOR A TENTH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the

Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 3:10 o'clock A. M. on February 22, 1914, upon its line of railroad at and between the stations of Indio, in the State of California, and Los Angeles, in said State, within the jurisdiction of this court, required and permitted its certain trainman and employee, to wit, W. M. Kinkade, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 3:10 o'clock A. M. on said date, to the hour of 8:40 o'clock P. M. on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train Extra, drawn by its own locomotive engine No. 2765, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars. [19]

FOR AN ELEVENTH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the

Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 3:10 o'clock A. M. on February 22, 1914, upon its line of railroad at and between the stations of Indio, in the State of California, and Los Angeles, in said State, within the jurisdiction of this court, required and permitted its certain trainman and employee, to wit, J. E. Pettijohn, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 3:10 o'clock A. M. on said date, to the hour of 8:40 o'clock P. M. on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train Extra, drawn by its own locomotive engine No. 2765, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars. [20]

FOR A TWELFTH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Califorina.

Plaintiff further alleges that in violation of the

Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 3:10 o'clock A. M. on February 22, 1914, upon its line of railroad at and between the stations of Indio, in the State of California, and Los Angeles, in said State, within the jurisdiction of this court, required and permitted its certain trainman and employee, to wit, T. F. McBurney, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 3:10 o'clock A. M. on said date, to the hour of 8:40 o'clock P. M. on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train Extra, drawn by its own locomotive engine No. 2765, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars. [21]

FOR A THIRTEENTH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the

Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 1:30 o'clock A. M. on February 24, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Palm Springs, in said State, within the jurisdiction of this court, required and permitted its certain engineer and employee, to wit, Chas. H. Winters, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 1:30 o'clock A. M. on said date, to the hour of 6:50 o'clock P. M. on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train No. 242, drawn by its own locomotive engine No. 2549, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars. [22]

FOR A FOURTEENTH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the

Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 1:30 o'clock A. M. on February 24, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Palm Springs, in said State, within the jurisdiction of this court, required and permitted its certain fireman and employee, to wit, Geo. E. Hutchison, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 1:30 o'clock A. M. on said date, to the hour of 6:50 o'clock P. M. on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train No. 242, drawn by its own locomotive engine No. 2549, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars. [23]

FOR A FIFTEENTH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the

Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 1:30 o'clock A. M. on February 24, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Palm Springs, in said State, within the jurisdiction of this court, required and permitted its certain conductor and employee, to wit, Ben. W. Lindley, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 1:30 o'clock A. M. on said date, to the hour of 6:50 o'clock P. M. on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train No. 242, drawn by its own locomotive engine No. 2549, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars. [24]

FOR A SIXTEENTH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act

of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 1:30 o'clock A. M. on February 24, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Palm Springs, in said State, within the jurisdiction of this court, required and permitted its certain trainman and employee, to wit, John T. Conley, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 1:30 o'clock A. M. on said date, to the hour of 6:50 o'clock P. M. on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train No. 242, drawn by its own locomotive engine No. 2549, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars. [25]

FOR A SEVENTEENTH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety

of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 1:30 o'clock A. M. on February 24, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Palm Springs, in said State, within the jurisdiction of this court, required and permitted its certain trainman and employee, to wit, Bert F. Perry, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 1:30 o'clock A. M. on said date, to the hour of 6:50 o'clock P. M. on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train No. 242, drawn by its own locomotive engine No. 2549, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars. [26]

FOR AN EIGHTEENTH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting

the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 1:30 o'clock A. M. on February 24, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Palm Springs, in said State, within the jurisdiction of this court, required and permitted its certain trainman and employee, to wit, James M. Jordon, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 1:30 o'clock A. M. on said date, to the hour of 6:50 o'clock P. M. on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train No. 242, drawn by its own locomotive engine No. 2549, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars. [27]

FOR A NINETEENTH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved

March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 1:55 o'clock A. M. on March 8, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, required and permitted its certain engineer and employee, to wit, Charles H. Winters, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 1:55 o'clock A. M. on said date, to the hour of 7:00 o'clock P. M. on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train No. 1st 242, drawn by its own locomotive engine No. 2617, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars. [28]

FOR A TWENTIETH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of

1:55 o'clock A. M. on March 8, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, required and permitted its certain fireman and employee, to wit, Wayland Ross, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 1:55 o'clock A. M. on said date, to the hour of 7:00 o'clock P. M. on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train No. 1st 242, drawn by its own locomotive engine No. 2617, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars. [29]

FOR A TWENTY-FIRST CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 1:55 o'clock A. M. on March 8, 1914, upon its line of railroad at and between the stations of Los Angeles,

in the State of California, and Indio, in said State, within the jurisdiction of this court, required and permitted its certain conductor and employee, to wit, U. G. Gibson, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 1:55 o'clock A. M. on said date, to the hour of 7:00 o'clock P. M. on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train No. 1st 242, drawn by its own locomotive engine No. 2617, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars. [30]

FOR A TWENTY-SECOND CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 1:55 o'clock A. M. on March 8, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State,

within the jurisdiction of this court, required and permitted its certain trainman and employee, to wit, W. M. Kinkade to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 1:55 o'clock A. M. on said date, to the hour of 7:00 o'clock P. M. on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train No. 1st 242, drawn by its own locomotive engine No. 2617, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars. [31]

FOR A TWENTY-THIRD CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 1:55 o'clock A. M. on March 8, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this Court, required and permitted its certain trainman and employee, to wit,

C. S. Courtney, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 1:55 o'clock A. M. on said date, to the hour of 7:00 o'clock P. M. on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train No. 1st 242, drawn by its own locomotive engine No. 2617, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars. [32]

FOR A TWENTY-FOURTH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 1:55 o'clock A. M. on March 8, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, required and permitted its certain trainman and employee, to wit, R. M. Sutherland to be and remain on duty as such for a longer period than sixteen consecutive hours,

to wit, from said hour of 1:55 o'clock A. M. on said date, to the hour of 7:00 o'clock P. M. on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train No. 1st 242, drawn by its own locomotive engine No. 2617, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars. [33]

FOR A TWENTY-FIFTH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," appoved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 7:30 o'clock P. M. on March 12, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, required and permitted its certain engineer and employee, to wit, E. J. Danfelser, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 7:30 o'clock P. M. on said date, to the hour of 12:25 o'clock P. M. on March 13, 1914.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train No. 516, drawn by its own locomotive engine No. 2711, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars. [34]

FOR A TWENTY-SIXTH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 7:30 o'clock P. M. on March 12, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, required and permitted its certain fireman and employee, to wit, O. L. McConnell, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 7:30 o'clock P. M. on said date, to the hour of 12:25 o'clock P. M. on March 13, 1914.

Plaintiff further alleges that said employee, while

required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train No. 516, drawn by its own locomotive engine No. 2711, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars. [37]

FOR A TWENTY-NINTH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 7:30 o'clock P. M. on March 12, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, required and permitted its certain trainman and employee, to wit, C. S. Courtney, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 7:30 o'clock P. M. on said date, to the hour of 12:25 o'clock P. M. on March 13, 1914.

Plaintiff further alleges that said employee, while

required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train No. 516, drawn by its own locomotive engine No. 2711, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.

[38]

FOR A THIRTIETH CAUSE OF ACTION, plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 7:30 o'clock P. M. on March 12, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, required and permitted its certain trainman and employee, to wit, R. M. Southerland, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 7:30 o'clock P. M. on said date, to the hour of 12:25 o'clock P. M. on March 13, 1914.

Plaintiff further alleges that said employee, while

required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train No. 516, drawn by its own locomotive engine No. 2711, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars. [39]

WHEREFORE, plaintiff prays judgment against said defendant in the sum of fifteen thousand dollars and its costs herein expended.

ALBERT SCHOONOVER,
United States Attorney.
HARRY R. ARCHBALD,
Asst. U. S. Atty.

[Endorsed]: No. 345—Civil. In the District Court of the United States for the So. Dist. of California, Southern Division. United States of America vs. Southern Pacific Company. Complaint. Filed Oct. 24, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [40]

In the District Court of the United States for the Southern District of California, Southern Division.

No. 345—CIV.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY,
Defendant.

Answer.

Now comes the defendant in the above-entitled action, and for its answer to plaintiff's first cause of action, admits, denies and alleges as follows:

I.

Defendant admits that it is a common carrier engaged in interstate commerce by railroad in the State of California.

Denies that in violation of the act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4th, 1907, the said defendant, beginning at the hour of 5:00 o'clock A. M. on February 2, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, required and permitted its certain engineer and employee, to wit, R. N. Richardson to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 5:00 o'clock

A. M. on said date to the hour of 9:50 o'clock P. M., on said date, or at any time or at all.

Defendant denies that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in **[41]** or connected with the movement of said defendant's train Extra, drawn by its own locomotive engine No. 2784, said train being then and there engaged in the movement of interstate traffic, and defendant therefore says that it is not liable to the plaintiff in the sum of five hundred dollars or any other sum.

Defendant further says that the said movement of said train was such that it complied with all the requirements and laws in force at the time of its operation.

FOR ANSWER TO PLAINTIFF'S SECOND CAUSE OF ACTION, defendant admits, denies, and alleges as follows:

Defendant admits that it is a common carrier engaged in interstate commerce by railroad in the State of California.

Denies that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4th, 1907, this defendant. beginning at the hour of 5:00 o'clock A. M., on February 2, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, or at any other time, or at all, required and permitted its certain fireman, and employee, to wit,

H. G. Dorrance, to be or remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 5:00 o'clock A. M. on said date, to the hour of 9:50 o'clock P. M. on said date.

Defendant denies that said employee while required or permitted to be or remain on duty as aforesaid, was engaged in or connected with the movement of this defendant's train Extra, drawn by its own locomotive engine No. 2784, said train being then or there engaged in the movement of interstate traffic. [42]

Defendant therefore says that it is not liable to the plaintiff in the sum of five hundred dollars, or any other sum.

Defendant further says that the said movement of said train was such that it complied with all the requirements of the laws in force at the time of its operation.

FOR ANSWER TO PLAINTIFF'S THIRD CAUSE OF ACTION, defendant admits, denies and alleges as follows:

Defendant admits that it is a common carrier engaged in interstate commerce by railroad in the State of California.

Denies that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4th, 1907, this defendant beginning at the hour of 5:00 o'clock A. M., on Feb. 2d, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California and Indio,

in said State, within the jurisdiction of this court, or at any other time, or at all, required or permitted its certain conductor and employee, to wit, U. G. Gibson, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from the said hour of 5:00 o'clock A. M. on said date, to the hour of 9:50 o'clock P. M. on said date.

Defendant denies that said employee, while required or permitted to be or remain on duty as aforesaid, was engaged in or connected with the movement of this defendant's train Extra, drawn by its own locomotive engine No. 2784, said train being then or there engaged in the movement of interstate traffic.

[43]

Defendant therefore says that it is not liable to the plaintiff in the sum of five hundred dollars, or any other sum.

Defendant further says that the said movement of said train was such that it complied with all the requirements of the laws in force at the time of its operation.

FOR ANSWER TO PLAINTIFF'S FOURTH CAUSE OF ACTION, defendant admits, denies and alleges as follows:

Defendant admits that it is a common carrier engaged in interstate commerce by railroad in the State of California.

Denies that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4th, 1907, this defendant beginning at the

hour of 5:00 o'clock A. M., on Feb. 2d, 1914, upon its line of railroad at and between the station of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, or at any other time, or at all, required or permitted its certain trainman and employee, to wit, W. M. Kinkade, to be and remain on duty as such for a longer period that sixteen consecutive hours, to wit, from the said hour of 5:00 o'clock A. M. on said date, to the hour of 9:50 o'clock P. M. on said date.

Defendant denies that said employee, while required or permitted to be or remain on duty as aforesaid, was engaged in or connected with the movement of this defendant's train Extra, drawn by its own locomotive engine No. 2784, said train being then or there engaged in the movement of interstate traffic. **[44]**

Defendant therefore says that it is not liable to the plaintiff in the sum of five hundred dollars, or any other sum.

Defendant further says that the said movement of said train was such that it complied with all the requirements of the laws in force at the time of its operation.

FOR ANSWER TO PLAINTIFF'S FIFTH CAUSE OF ACTION, defendant admits, denies and alleges as follows:

Defendant admits that it is a common carrier engaged in interstate commerce by railroad in the State of California.

Denies that in violation of the Act of Congress, known as "An Act to promote the safety of em-

ployees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4th, 1907, this defendant beginning at the hour of 5:00 o'clock A. M., on Feb. 2d, 1914 upon its line of railroad at and between the stations of Los Angeles in the State of California and Indio, in said State, within the jurisdiction of this court, or at any other time or at all, required or permitted its certain trainman and employee, to wit, C. S. Courtney, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from the said hour of 5:00 o'clock A. M. on said date, to the hour of 9:50 o'clock P. M. on said date.

Defendant denies that said employee, while required or permitted to be or remain on duty as aforesaid, was engaged in or connected with the movement of this defendant's train Extra drawn by its own locomotive engine No. 2784 said train being then or there engaged in the movement of interstate traffic. [45]

Defendant therefore says that it is not liable to the plaintiff in the sum of five hundred dollars, or any other sum.

Defendant further says that the said movement of said train was such that it complied with all the requirements of the laws in force at the time of its operation.

FOR ANSWER TO PLAINTIFF'S SIXTH CAUSE OF ACTION, defendant admits, denies and alleges as follows:

Defendant admits that it is a common carrier en-

gaged in interstate commerce by railroad in the State of California.

Denies that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4th, 1907, this defendant beginning at the hour of 5:00 o'clock A. M., on Feb. 2d, 1914 upon its line of railroad at and between the stations of Los Angeles in the State of California and Indio, in said State, within the jurisdiction of this court, or at any other time or at all, required or permitted its certain trainman and employee, to wit, Elmer Waitman, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from the said hour of 5:00 o'clock A. M. on said date, to the hour of 9:50 o'clock P. M. on said date.

Defendant denies that said employee, while required or permitted to be or remain on duty as aforesaid, was engaged in or connected with the movement of this defendant's train Extra drawn by its own locomotive engine No. 2784 said train being then or there engaged in the movement of interstate traffic. [46]

Defendant therefore says that it is not liable to the plaintiff in the sum of five hundred dollars, or any other sum.

Defendant further says that the said movement of said train was such that it complied with all the requirements of the laws in force at the time of its operation.

FOR ANSWER TO PLAINTIFF'S SEVENTH

CAUSE OF ACTION, defendant admits, denies and alleges as follows:

Defendant admits that it is a common carrier engaged in interstate commerce by railroad in the State of California.

Denies that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4th, 1907, this defendant beginning at the hour of 3:10 o'clock A. M., on Feb. 22, 1914, upon its line of railroad at and between the stations of Indio, in the State of California and Los Angeles, in said State, within the jurisdiction of this court, or at any other time or at all, required or permitted its certain engineer and employee, to wit, Charles O. Wine, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from the said hour of 3:10 o'clock A. M. on said date, to the hour of 8:40 o'clock P. M. on said date.

Defendant denies that said employee, while required or permitted to be or remain on duty as aforesaid, was engaged in or connected with the movement of this defendant's train Extra drawn by its own locomotive engine No. 2765 said train being then or there engaged in the movement of interstate traffic. [47]

Defendant therefore says that it is not liable to the plaintiff in the sum of five hundred dollars, or any other sum.

Defendant further says that the said movement of said train was such that it complied with all the re-

quirements of the laws in force at the time of its operation.

FOR ANSWER TO PLAINTIFF'S EIGHTH CAUSE OF ACTION, defendant admits, denies and alleges as follows:

Defendant admits that it is a common carrier engaged in interstate commerce by railroad in the State of California.

Denies that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4th, 1907, this defendant beginning at the hour of 3:10 o'clock A. M., on Feb. 22, 1914, upon its line of railroad at and between the stations of Indio, in the State of California and Los Angeles, in said State, within the jurisdiction of this court, or at any other time or at all, required or permitted its certain fireman and employee, to wit, P. T. Sherley, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from the said hour of 3:10 o'clock A. M. on said date, to the hour of 8:40 o'clock P. M. on said date.

Defendant denies that said employee, while required or permitted to be or remain on duty as aforesaid, was engaged in or connected with the movement of this defendant's train Extra drawn by its own locomotive engine No. 2765 said train being then or there engaged in the movement of interstate traffic. [48]

Defendant therefore says that it is not liable to the

plaintiff in the sum of five hundred dollars, or any other sum.

Defendant further says that the said movement of said train was such that it complied with all the requirements of the laws in force at the time of its operation.

FOR ANSWER TO PLAINTIFF'S NINTH CAUSE OF ACTION, defendant admits, denies and alleges as follows:

Defendant admits that it is a common carrier engaged in interstate commerce by railroad in the State of California.

Denies that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4th, 1907, this defendant beginning at the hour of 3:10 o'clock A. M. on Feb. 22, 1914, upon its line of railroad at and between the stations of Indio, in the State of California and Los Angeles, in said State, within the jurisdiction of this court, or at any other time or at all, required or permitted its certain conductor and employee, to wit, U. G. Gibson, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from the said hour of 3:10 o'clock A. M. on said date, to the hour of 8:40 o'clock P. M. on said date.

Defendant denies that said employee, while required or permitted to be or remain on duty as aforesaid, was engaged in or connected with the movement of this defendant's train Extra, drawn by its own locomotive engine No. 2765, said train being

then or there engaged in the movement of interstate traffic. [49]

Defendant therefore says that it is not liable to the plaintiff in the sum of five hundred dollars, or any other sum.

Defendant further says that the said movement of said train was such that it complied with all the requirements of the laws in force at the time of its operation.

FOR ANSWER TO PLAINTIFF'S TENTH CAUSE OF ACTION, defendant admits, denies and alleges as follows:

Denies that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4th, 1907, this defendant beginning at the hour of 3:10 o'clock A. M., on Feb. 22, 1914, upon its line of railroad at and between the stations of Indio, in the State of California and Los Angeles, in said State, within the jurisdiction of this court, or at any other time, or at all, required or permitted its certain trainman and employee, to wit, W. M. Kinkade, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from the said hour of 3:10 o'clock A. M. on said date, to the hour of 8:40 o'clock P. M. on said date.

Defendant denies that said employee, while required or permitted to be or remain on duty as aforesaid, was engaged in or connected with the movement of this defendant's train Extra, drawn by its own locomotive engine No. 2765, said train being

then or there engaged in the movement of interstate traffic. [50]

Defendant therefore says that it is not liable to the plaintiff in the sum of five hundred dollars, or any other sum.

Defendant further says that the said movement of said train was such that it complied with all the requirements of the laws in force at the time of its operation.

FOR ANSWER TO PLAINTIFF'S ELEVENTH CAUSE OF ACTION, defendant admits, denies and alleges as follows:

Denies that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4th, 1907, this defendant beginning at the hour of 3:10 o'clock A. M., on February 22, 1914, upon its line of railroad at and between the stations of Indio, in the State of California and Los Angeles, in said State, within the jurisdiction of this court, or at any other time, or at all, required or permitted its certain trainman and employee, to wit, J. E. Pettijohn, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from the said hour of 3:10 o'clock A. M. on said date to the hour of 8:40 o'clock P. M. on said date.

Defendant denies that said employee, while required or permitted to be or remain on duty as aforesaid, was engaged in or connected with the movement of this defendant's train Extra, drawn by its own locomotive engine No. 2765, said train being

then or there engaged in the movement of interstate traffic. [51]

Defendant therefore says that it is not liable to the plaintiff in the sum of five hundred dollars, or any other sum.

Defendant further says that the said movement of said train was such that it complied with all the requirements of the laws in force at the time of its operation.

FOR ANSWER TO PLAINTIFF'S TWELFTH CAUSE OF ACTION, defendant admits, denies and alleges as follows:

Denies that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4th, 1907, this defendant beginning at the hour of 3:10 o'clock A. M. on February 22, 1914, upon its line of railroad at and between the stations of Indio, in the State of California and Los Angeles, in said State, within the jurisdiction of this court, or at any other time, or at all, required or permitted its certain trainman and employee, to wit, T. F. McBurney, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from the said hour of 3:10 o'clock A. M. on said date, to the hour of 8:40 o'clock P. M. on said date.

Defendant denies that said employee, while required or permitted to be or remain on duty as aforesaid, was engaged in or connected with the movement of this defendant's train Extra, drawn by its own locomotive engine No. 2765, said train being

then or there engaged in the movement of interstate traffic. [52]

Defendant therefore says that it is not liable to the plaintiff in the sum of five hundred dollars, or any other sum.

Defendant further says that the said movement of said train was such that it complied with all the requirements of the laws in force at the time of its operation.

FOR ANSWER TO PLAINTIFF'S THIRTEENTH CAUSE OF ACTION, defendant admits, denies and alleges as follows:

Defendant admits that it is a common carrier engaged in interstate commerce by railroad in the State of California.

Denies that in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4th, 1907, this defendant beginning at the hour of 1:30 o'clock A. M. on February 24, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Palm Springs, in said State, within the jurisdiction of this court, or at any other time or at all, required or permitted its certain engineer and employee, to wit, Chas. H. Winters, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from the said hour of 1:30 o'clock A. M. on said date to the hour of 6:50 o'clock P. M. on said date.

Defendant denies that said employee, while so required or permitted to be or remain on duty as aforesaid, was engaged in or connected with the movement of this defendant's train No. 242, drawn by its own locomotive engine No. 2549, said train being then or there engaged in the movement of interstate traffic.
[53]

Defendant therefore says that it is not liable to the plaintiff in the sum of five hundred dollars, or any other sum.

Defendant further says that the said movement of said train was such that it complied with all the requirements of the laws in force at the time of its operation.

FOR ANSWER TO PLAINTIFF'S 14TH CAUSE OF ACTION, defendant admits, denies and alleges as follows:

Defendant admits that it is a common carrier engaged in interstate commerce by railroad in the State of California.

Denies that in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4th, 1907, this defendant beginning at the hour of 1:30 o'clock A. M., on February 24, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Palm Springs, in said State, within the jurisdiction of this court, or at any other time or at all, required or permitted its certain fireman and employee, to wit, Geo. E. Hutchison, to be and

remain on duty as such for a longer period than sixteen consecutive hours, to wit, from the said hour of 1:30 o'clock A. M. on said date to the hour of 6:50 o'clock P. M. on said date.

Defendant denies that said employee, while so required or permitted to be or remain on duty as aforesaid, was engaged in or connected with the movement of this defendant's train No. 242 drawn by its own locomotive engine No. 2549, said train being then or there engaged in the movement of interstate traffic. [54]

Defendant therefore says that it is not liable to the plaintiff in the sum of five hundred dollars, or any other sum.

Defendant further says that the said movement of said train was such that it complied with all the requirements of the laws in force at the time of its operation.

FOR ANSWER TO PLAINTIFF'S FIFTEENTH CAUSE OF ACTION, defendant admits, denies and alleges as follows:

Defendant admits that it is a common carrier engaged in interstate commerce by railroad in the State of California.

Denies that in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4th, 1907, this defendant beginning at the hour of 1:30 o'clock A. M., on February 24, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Palm

Springs, in said State, within the jurisdiction of this court, or at any other time or at all, required or permitted its certain conductor and employee, to wit, Ben W. Lindley, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from the said hour of 1:30 o'clock A. M. on said date to the hour of 6:50 o'clock P. M on said date.

Defendant denies that said employee, while so required or permitted to be or remain on duty as aforesaid, was engaged in or connected with the movement of this defendant's train No. 242, drawn by its own locomotive engine No. 2549, said train being then or there engaged in the movement of interstate traffic. [55]

Defendant therefore says that it is not liable to the plaintiff in the sum of five hundred dollars, or any other sum.

Defendant further says that the said movement of said train was such that it complied with all the requirements of the laws in force at the time of its operation.

FOR ANSWER TO PLAINTIFF'S SIXTEENTH CAUSE OF ACTION, defendant admits, denies and alleges as follows:

Defendant admits that it is a common carrier engaged in interstate commerce by railroad in the State of California.

Denies that in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved

March 4th, 1907, this defendant beginning at the hour of 1:30 o'clock A. M., on February 24, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Palm Springs, in said State, within the jurisdiction of this court, or at any other time, or at all, required or permitted its certain trainman and employee, to wit, John T. Conley, to be and remain on duty as such for a longer period that sixteen consecutive hours, to wit, from the said hour of 1:30 o'clock A. M. on said date to the hour of 6:50 o'clock P. M. on said date.

Defendant denies that said employee, while so required or permitted to be or remain on duty as aforesaid, was engaged in or connected with the movement of this defendant's train No. 242, drawn by its own locomotive engine No. 2549, said train being then or there engaged in the movement of interstate traffic. **[56]**

Defendant therefore says that it is not liable to the plaintiff in the sum of five hundred dollars, or any other sum.

Defendant further says that the said movement of said train was such that it complied with all the requirements of the laws in force at the time of its operation.

FOR ANSWER TO PLAINTIFF'S SEVENTEENTH CAUSE OF ACTION, defendant admits, denies and alleges as follows:

Defendant admits that it is a common carrier engaged in interstate commerce by railroad in the State of California.

Denies that in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4th, 1907, this defendant beginning at the hour of 1:30 o'clock A. M., on February 24, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Palm Springs, in said State, within the jurisdiction of this court, or at any other time, or at all, required or permitted its certain trainman and employee, to wit, Bert F. Berry, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from the said hour of 1:30 o'clock A. M. on said date to the hour of 6:50 o'clock P. M. on said date.

Defendant denies that said employee, while so required or permitted to be or remain on duty as aforesaid, was engaged in or connected with the movement of this defendant's train No. 242, drawn by its own locomotive engine No. 2549, said train being then or there engaged in the movement of interstate traffic. **[57]**

Defendant therefore says that it is not liable to the plaintiff in the sum of five hundred dollars, or any other sum.

Defendant further says that the said movement of said train was such that it complied with all the requirements of the laws in force at the time of its operation.

FOR ANSWER TO PLAINTIFF'S EIGH-

TEENTH CAUSE OF ACTION, defendant admits, denies and alleges as follows:

Defendant admits that it is a common carrier engaged in interstate commerce by railroad in the State of California.

Denies that in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4th, 1907, this defendant beginning at the hour of 1:30 o'clock A. M., on February 24, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Palm Springs, in said State, within the jurisdiction of this court, or at any other time, or at all, required or permitted its certain trainman and employee, to wit, James M. Jordon, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from the said hour of 1:30 o'clock A. M. on said date to the hour of 6:50 o'clock P. M. on said date.

Defendant denies that said employee, while so required or permitted to be or remain on duty as aforesaid, was engaged in or connected with the movement of this defendant's train No. 242, drawn by its own locomotive engine No. 2549, said train being then or there engaged in the movement of interstate traffic. [58]

Defendant therefore says that it is not liable to the plaintiff in the sum of five hundred dollars ($500) or any other sum.

Defendant further says that the said movement

of said train was such that it complied with all the requirements of the laws in force at the time of its operation.

FOR ANSWER TO PLAINTIFF'S NINETEENTH CAUSE OF ACTION, defendant admits, denies and alleges as follows:

Defendant admits that it is a common carrier engaged in interstate commerce by railroad in the State of California.

Denies that in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4th, 1907, this defendant beginning at the hour of 1:55 o'clock A. M., on March 8, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California and Indio, in said State, within the jurisdiction of this court, or at any other time or at all, required or permitted it certain engineer and employee, to wit, Charles H. Winters, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from the said hour of 1:55 o'clock A. M. on said date to the hour of 7:00 o'clock P. M. on said date.

Defendant denies that said employee, while so required or permitted to be or remain on duty as aforesaid, was engaged in or connected with the movement of this defendant's train No. 1st 242 drawn by its own locomotive No. 2617 said train being then or there engaged in the movement of interstate commerce. [59]

Defendant therefore says that it is not liable to

to the plaintiff in the sum of five hundred dollars ($500) or any other sum.

Defendant further says that the said movement of said train was such that it complied with all the requirements of the laws in force at the time of its operation.

FOR ANSWER TO PLAINTIFF'S TWENTIETH CAUSE OF ACTION, defendant admits, denies and alleges as follows:

Defendant admits that it a common carrier engaged in interstate commerce by railroad in the State of California.

Denies that in violation of the Act of Congress known as "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4th, 1907, this defendant beginning at the hour of 1:55 o'clock A. M. on March 8, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California and Indio, in said State, within the jurisdiction of this court, or at any other time or at all, required or permitted its certain fireman and employee, to wit, Wayland Ross, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from the said hour of 1:55 o'clock A. M. on said date to the hour of 7:00 o'clock P. M. on said date.

Defendant denies that said employee, while so required or permitted to be or remain on duty as aforesaid, was engaged in or connected with the movement of this defendant's train No. 1st 242

drawn by its own locomotive No. 2617 said train being then or there engaged in the movement of interstate commerce. **[60]**

Defendant therefore says that it is not liable to the plaintiff in the sum of five hundred dollars ($500) or any other sum.

Defendant further says that the said movement of said train was such that it complied with all the requirements of the laws in force at the time of its operation.

FOR ANSWER TO PLAINTIFF'S TWENTY-FIRST CAUSE OF ACTION, defendant admits, denies and alleges as follows:

Defendant admits that it is a common carrier engaged in interstate commerce by railroad in the State of California.

Denies that in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4th, 1907, this defendant beginning at the hour of 1:55 o'clock A. M. on March 8, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California and Indio, in said State, within the jurisdiction of this court, or at any other time or at all, required or permitted its certain conductor and employee, to wit: U. G. Gibson, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from the said hour of 1:55 o'clock A. M. on said date to the hour of 7:00 o'clock P. M. on said date.

Defendant denies that said employee, while so

required or permitted to be or remain on duty as aforesaid, was engaged in or connected with the movement of this defendant's train No. 1st 242 drawn by its own locomotive No. 2617 said train being then or there engaged in the movement of interstate commerce. **[61]**

Defendant therefore says that it is not liable to the plaintiff in the sum of five hundred dollars ($500) or any other sum.

Defendant further says that the said movement of said train was such that it complied with all the requirements of the laws in force at the time of its operation.

FOR ANSWER TO PLAINTIFF'S 22d CAUSE OF ACTION, defendant admits, denies and alleges as follows:

Defendant admits that it is a common carrier engaged in interstate commerce by railroad in the State of California.

Denies that in violation of the Act of Congress known as "An Act to promote safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4th, 1907, this defendant beginning at the hour of 1:55 o'clock A. M. on March 8, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California and Indio, in said State, within the jurisdiction of this court, or at any other time or at all, required or permitted its certain trainman and employee, to wit, W. M. Kinkade, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from the said

hour of 1:55 o'clock A. M. on said date to the hour of 7:00 o'clock P. M. on said date.

Defendant denies that said employee, while so required or permitted to be or remain on duty as aforesaid, was engaged in or connected with the movement of this defendant's train No. 1st 242 drawn by its own locomotive No. 2617 said train being then or there engaged in the movement of interstate commerce. **[62]**

Defendant therefore says that it is not liable to the plaintiff in the sum of five hundred dollars ($500) or any other sum.

Defendant further says that the said movement of said train was such that it complied with all the requirements of the laws in force at the time if its operation.

FOR ANSWER TO PLAINTIFF'S TWENTY-THIRD CAUSE OF ACTION, defendant admits, denies and alleges as follows:

Defendant admits that it a common carrier engaged in interstate commerce by railroad in the State of California.

Denies that in violation of the Act of Congress known as "An Act to promote safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4th, 1907, this defendant beginning at the hour of 1:55 o'clock A. M. on March 8, 1914 upon its line of railroad at and between the stations of Los Angeles, in the State of California and Indio, in said State, within the jurisdiction of this court, or at any other time or at all, required or permitted its

certain trainman and employee, to wit, C. S. Courtney, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from the said hour of 1:55 o'clock A. M. on said date to the hour of 7:00 o'clock P. M. on said date.

Defendant denies that said employee, while so required or permitted to be or remain on duty as aforesaid, was engaged in or connected with the movement of this defendant's train No. 1st 242 drawn by its own locomotive No. 2617 said train being then or there engaged in the movement of interstate commerce. **[63]**

Defendant therefore says that it is not liable to the plaintiff in the sum of five hundred dollars ($500) or any other sum.

Defendant further says that the said movement of said train was such that it complied with all the requirements of the laws in force at the time of its operation.

FOR ANSWER TO PLAINTIFF'S TWENTY-FOURTH CAUSE OF ACTION, defendant admits, denies and alleges as follows:

Defendant admits that it is a common carrier engaged in interstate commerce by railroad in the State of California.

Denies that in violation of the Act of Congress known as "An Act to promote safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4th, 1907, this defendant beginning at the hour of 1:55 o'clock A. M. on March 8, 1914 upon its line of railroad at and between the stations of Los An-

geles, in the State of California and Indio, in said State, within the jurisdiction of this court, or at any other time or at all, required or permitted its certain trainman and employee, to wit, R. M. Sutherland to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from the said hour of 1:55 o'clock A. M. on said date to the hour of 7:00 o'clock P. M. on said date.

Defendant denies that said employee, while so required or permitted to be or remain on duty as aforesaid, was engaged in or connected with the movement of this defendant's train No. 1st 242 drawn by its own locomotive No. 2617 said train being then or there engaged in the movement of interstate commerce. **[64]**

Defendant therefore says that it is not liable to the plaintiff in the sum of five hundred dollars ($500) or any other sum.

Defendant further says that the said movement of said train was such that it complied with all the requirements of the laws in force at the time of its operation.

FOR ANSWER TO PLAINTIFF'S TWENTY-FIFTH CAUSE OF ACTION, defendant admits, denies and alleges as follows:

Defendant admits that it a common carrier engaged in interstate commerce by railroad in the State of California.

Denies that in violation of the Act of Congress known as "An Act to promote safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March

4th, 1907, this defendant beginning at the hour of 7:30 o'clock P. M. on March 12, 1914, upon its line of railroad at and between the stations of Los Angeles in the State of California and Indio, in said State, within the jurisdiction of this court, or at any other time or at all, required or permitted its certain engineer and employee, to wit, E. J. Danfelser, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from the said hour of 7:30 o'clock P. M. on said date to the hour of 12:25 o'clock P. M. on March 13, 1914.

Defendant denies that said employee, while so required or permitted to be or remain on duty as aforesaid, was engaged in or connected with the movement of this defendant's train No. 516 drawn by its own locomotive No. 2711 said train being then or there engaged in the movement of interstate commerce. **[65]**

Defendant therefore says that it is not liable to the plaintiff in the sum of five hundred dollars ($500) or any other sum.

Defendant further says that the said movement of said train was such that it complied with all the requirements of the laws in force at the time of its operation.

FOR ANSWER TO PLAINTIFF'S TWENTY-SIXTH CAUSE OF ACTION, defendant admits, denies and alleges as follows:

Defendant admits that it is a common carrier engaged in interstate commerce by railroad in the State of California.

Denies that in violation of the Act of Congress

known as "An Act to promote safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4th, 1907, this defendant beginning at the hour of 7:30 o'clock P. M. on March 12, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California and Indio, in said State, within the jurisdiction of this court, or at any other time or at all, required or permitted its certain fireman and employee, to wit, O. L. McConnell, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from the said hour of 7:30 o'clock P. M., on said date to the hour of 12:25 o'clock P. M. on March 13, 1914.

Defendant denies that said employee, while so required or permitted to be or remain on duty as aforesaid, was engaged in or connected with the movement of this defendant's train No. 516 drawn by its own locomotive No. 2711, said train being then or there engaged in the movement of interstate commerce. [66]

Defendant therefore says that it is not liable to the plaintiff in the sum of five hundred dollars ($500) or any other sum.

Defendant further says that the said movement of said train was such that it complied with all the requirements of the laws in force at the time of its operation.

FOR ANSWER TO PLAINTIFF'S TWENTY-SEVENTH CAUSE OF ACTION, defendant admits, denies and alleges as follows:

Defendant admits that it is a common carrier en-

gaged in interstate commerce by railroad in the State of California.

Denies that in violation of the Act of Congress known as "An Act to promote safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4th, 1907, this defendant beginning at the hour of 7:30 o'clock P. M. on March 12, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California and Indio, in said State, within the jurisdiction of this court, or at any other time or at all, required or permitted its certain conductor and employee, to wit, U. G. Gibson, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from the said hour of 7:30 o'clock P. M. on said date to the hour of 12:25 o'clock P. M. on March 13, 1914.

Defendant denies that said employee, while so required or permitted to be or remain on duty as aforesaid, was engaged in or connected with the movement of this defendant's train No. 516 drawn by its own locomotive No. 2711, said train being then or there engaged in the movement of interstate commerce. [67]

Defendant therefore says that it is not liable to the plaintiff in the sum of five hundred dollars ($500) or any other sum.

Defendant further says that the said movement of said train was such that it complied with all the requirements of the laws in force at the time of its operation.

FOR ANSWER TO PLAINTIFF'S TWENTY-

EIGHTH CAUSE OF ACTION, defendant admits, denies and alleges as follows:

Defendant admits that it is a common carrier engaged in interstate commerce by railroad in the State of California,

Denies that in violation of the Act of Congress known as "An Act to promote safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4th, 1907, this defendant, beginning at the hour of 7:30 o'clock P. M., on March 12, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of the court, or at any other time or at all, required or permitted its certain trainman and employee, to wit, W. M. Kinkade, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from the said hour of 7:30 o'clock P. M., on said date to the hour of 12:25 o'clock P. M. on March 13th, 1914.

Defendant denies that said employee, while so required or permitted to be or remain on duty as aforesaid, was engaged in or connected with the movement of this defendant's train No. 516 drawn by its own locomotive No. 2711, said train being then or there engaged in interstate commerce. [68]

Defendant therefore says that it is not liable to the plaintiff in the sum of five hundred dollars ($500) or any other sum.

Defendant further says that the said movement of said train was such that it complied with all the requirements of the laws in force at the time of its operation.

FOR ANSWER TO PLAINTIFF'S TWENTY-NINTH CAUSE OF ACTION, defendant admits, denies and alleges as follows:

Defendant admits that it is a common carrier engaged in interstate commerce by railroad in the State of California.

Denies that in violation of the Act of Congress known as "An Act to promote safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4th, 1907, this defendant, beginning at the hour of 7:30 o'clock P. M., on March 12, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of the court, or at any other time or at all, required or permitted its certain trainman and employee, to wit, C. S. Courtney, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from the said hour of 7:30 o'clock P. M., on said date to the hour of 12:25 o'clock P. M. on March 13th, 1914.

Defendant denies that said employee, while so required or permitted to be or remain on duty as aforesaid, was engaged in or connected with the movement of this defendant's train No. 516 drawn by its own locomotive No. 2711, said train being then or there engaged in interstate commerce. [69]

Defendant therefore says that it is not liable to the plaintiff in the sum of five hundred dollars ($500) or any other sum.

Defendant further says that the said movement of said train was such that it complied with all the requirements of the laws in force at the time of its operation.

FOR ANSWER TO PLAINTIFF'S THIRTIETH CAUSE OF ACTION, defendant admits, denies and alleges as follows:

Defendant admits that it is a common carrier engaged in interstate commerce by railroad in the State of California,

Denies that in violation of the Act of Congress known as "An Act to promote safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4th, 1907, this defendant, beginning at the hour of 7:30 o'clock P. M., on March 12, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of the Court, or at any other time or at all, required or permitted its certain trainman and employee, to wit, R. M. Sutherland, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from the said hour of 7:30 o'clock P. M., on said date, to the hour of 12:25 o'clock P. M. on March 13th, 1914.

Defendant denies that said employee, while so required or permitted to be or remain on duty as aforesaid, was engaged in or connected with the movement of this defendant's train No. 516 drawn by its own locomotive No. 2711, said train being then or there engaged in interstate commerce. [70]

Defendant therefore says that it is not liable to

the plaintiff in the sum of five hundred dollars ($500) or any other sum.

Defendant further says that the said movement of said train was such that it complied with all the requirements of the laws in force at the time of its operation.

WHEREFORE, defendant prays that plaintiff take nothing by this action, and that it recover its costs herein expended, and for such other and further relief as it may be justly entitled to in the premises.

HENRY T. GAGE,
W. I. GILBERT,
Attorneys for Defendant.

State of California,
County of Los Angeles,

W. I. Gilbert, being first duly sworn, deposes and says: That I am one of the attorneys for the defendant, Southern Pacific Company, in the above-entitled action; that I have read the within and foregoing Answer and know the contents thereof, and that the same is true of my own knowledge except as to those matters which are therein stated upon information or belief, and as to those matters, I believe it to be true.

That he makes this verification for the reason that the officers of said corporation are absent from the County of Los Angeles, State of California.

W. I. GILBERT.

Subscribed and sworn to before me this the 4th day of June, A. D. 1915.

[Seal] C. F. CABLE,

Notary Public, in and for the County of Los Angeles, State of California. [71]

[Endorsed]: Original. No. 345–Civil. In the United States District Court, Southern District of California, Southern Division. United States of America, Plaintiff, vs. Southern Pacific Company, Defendant. Answer. Service of the within Answer is hereby admitted this 4th day of June, 1915. Clyde R. Moody, Asst. U. S. Atty., Attorney for Plaintiff. Filed June 4, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Henry T. Gage & W. I. Gilbert, 1208–10 Merchants Nat'l Bank Bldg., Sixth and Spring Streets, Los Angeles, Cal., Attorneys for Defendant. [72]

In the District Court of the United States, in and for the Southern District of California, Southern Division.

No. 345—CIVIL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,

Defendant.

Amended Answer.

Defendant, by leave of Court first had and ob-

tained, answers the declaration of plaintiff as follows, to wit:

1. Defendant denies that in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, the said defendant, beginning at the hour of five o'clock A. M., of February 2, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, and within the jurisdiction of this court, required or permitted its engineer, R. N. Richardson, to be or remain on duty longer than sixteen consecutive hours, to wit, from the hour of five o'clock A. M. of said date to the hour of nine o'clock and fifty minutes (9.50) P. M. of said date.

2. Defendant denies that by reason of the alleged violation of said Act of Congress, defendant is liable to plaintiff in the sum of five hundred ($500) dollars, or in any other sum. [73]

3. Further answering, defendant alleges that the employee named in said count went on duty in the service of defendant at 5:45 A. M. of February 2, 1914, in charge of defendant's train, as alleged in plaintiff's complaint, and proceeded in charge of said train to the station of Colton, California, at which time said employee was given a full and absolute release, during which time he was not called upon to perform any duty in connection with his service as trainman, but was permitted to follow the suggestions of himself; that he was entirely relieved from the performance of any duty in connection with

his employment by said defendant for a period of one hour and thirty minutes; that said station at Colton is equipped with a restroom; that the trains operated by the employee named herein as soon as they reach the yards at Colton, are delivered to the yard crews and all work in connection with said trains is performed by crews entirely independent of the crews of which said Richardson was a member.

II.

For answer to plaintiff's second cause of action herein, defendant admits, denies, and alleges as follows:

1. Defendant denies that in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers thereon," approved March 4, 1907, the said defendant, beginning at the hour of five o'clock A. M. on February 2, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, or at any other time or at all, required or permitted its certain fireman, and employee, to wit, H. G. Dorrance, to be and remain on duty as such for a longer period *of* sixteen consecutive [74] hours, to wit, from the hour of five o'clock A. M. of said date to the hour of 9:50 P. M. of said date.

2. Defendant denies that by reason of the alleged violation of said Act of Congress, defendant is liable to plaintiff in the sum of five hundred ($500) dollars, or in any other sum.

3. Further answering, defendant alleges that the

employees named in said count were on duty in the service of defendant at 5:45 A. M. of February 2, 1914, in the capacity of fireman on said train, as alleged in plaintiff's complaint, and proceeded thereon to the station of Colton, California, at which time said employee was given a full and absolute release, during which time he was not called upon to perform any duty in connection with his service as fireman, or in any other capacity but was permitted to follow the suggestions of himself; that he was entirely relieved from the performance of any duty in connection with his employment by said defendant for a period of one hour and thirty minutes; that said station at Colton is equipped with a restroom; that the trains operated by the employee named herein as soon as they reach the yards at Colton, are delivered to the yard crews and all work in connection with said trains is performed by crews entirely independent of the crews of which said Dorrance was a member.

III.

For answer to plaintiff's third cause of action herein, defendant admits, denies, and alleges as follows:

1. Defendant denies that in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, the said defendant, [75] beginning at the hour of five o'clock A. M., of February 2, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of Califor-

nia, and Indio, in said State, and within the jurisdiction of this court, required or permitted its conductor, U. G. Gibson, to be or remain on duty longer than sixteen consecutive hours, to wit, from the hour of five o'clock A. M. of said date to the hour of nine o'clock and fifty minutes P. M. of said date.

2. Defendant denies that by reason of the alleged violation of said act of Congress, defendant is liable to plaintiff in the sum of five hundred ($500) dollars, or in any other sum.

3. Further answering, defendant alleges that the employee named in said count went on duty in the service of defendant at 9:45 A. M. of February 2, 1914, in charge of defendant's train, as alleged in plaintiff's complaint, and proceeded in charge of said train to the station of Colton, California, at which time said employee was given a full and absolute release, during which time he was not called upon to perform any duty in connection with his service as conductor, but was permitted to follow the suggestions of himself; that he was entirely relieved from the performance of any duty in connection with his employment by said defendant for a period of one hour and thirty minutes; that said station at Colton is equipped with a restroom; that the trains operated by the employee named herein as soon as they reach the yards at Colton, are delivered to the yard crews and all work in connection with said trains is performed by crews entirely independent of the crews of which said Gibson was a member. [76]

IV.

For answer to plaintiff's fourth cause of action

herein, defendant admits, denies, and alleges as follows:

1. Defendant denies that in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, the said defendant, beginning at the hour of five o'clock A. M., of February 2, 1914, upon its lines of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, or at any other time or at all, required or permitted *it* certain trainman and employee, to wit, W. M. Kinkade, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from the hour of five o'clock A. M. of said date to the hour of 9:50 P. M. of said date.

2. Defendant denies that by reason of the alleged violation of said act of Congress, defendant is liable to plaintiff in the sum of five hundred ($500) dollars, or in any other sum.

3. Further answering, defendant alleges that the employee named in said count went on duty in the service of defendant at 9:45 A. M. of February 2, 1914, in the capacity of trainman on defendant's train, as alleged in plaintiff's complaint, and proceeded on said train to the station of Colton, California, at which place said employee was given a full and absolute release, during which time he was not [77] called upon to perform any duty in connection with his service as conductor, but was permitted to follow the suggestions of himself; that he was en-

tirely relieved from the performance of any duty in connection with his employment by defendant for a period of one hour and thirty minutes; that said station at Colton is equipped with a restroom that the trains operated by the employee named herein as soon as they reach the yards at Colton, are delivered to the yardcrews and all work in connection with said trains is performed by crews entirely independent of the crews of which said Gibson was a member. [78]

V.

For answer to plaintiff's fifth cause of action herein, defendant admits, denies, and alleges as follows:

1. Defendant denies that in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, the said defendant, beginning at the hour of five o'clock A. M., of February 2, 1914, upon its lines of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, or at any other time or at all, required or permitted *it* certain trainman and employee, to wit, C. S. Courtney, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from the hour of five o'clock A. M. of said date to the hour of 9:50 P. M. of said date.

2. Defendant denies that by reason of the alleged violation of said act of Congress, defendant is liable to plaintiff in the sum of five hundred ($500) dollars, or in any other sum.

3. Further answering, defendant alleges that the employee named in said count went on duty in the service of defendant at 9:45 A. M. of February 2, 1914, in the capacity of trainman on defendant's train, as alleged in plaintiff's complaint, and proceeded on said train to the station of Colton, California, at which place said employee was given a full and absolute release, during which time he was not [79] called upon to perform any duty in connection with his service as conductor, but was permitted to follow the suggestions of himself; that he was entirely relieved from the performance of any duty in connection with his employment by defendant for a period of one hour and thirty minutes; that said station at Colton is equipped with a restroom; that the trains operated by the employee named herein as soon as they reach the yards at Colton, are delivered to the yard crews and all work in connection with said trains is performed by crews entirely independent of the crews of which said Gibson was a member. [80]

VI.

For answer to plaintiff's sixth cause of action herein, defendant admits, denies, and alleges as follows:

1. Defendant denies that in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, the said defendant, beginning at the hour of five o'clock A. M., of February 2, 1914, upon its lines of railroad at and between the

stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, or at any other time or at all, required or permitted *it* certain trainman and employee, to wit, Elmer Waitman, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from the hour of five o'clock A. M. of said date to the hour of 9:50 P. M. of said date.

2. Defendant denies that by reason of the alleged violation of said act of Congress, defendant is liable to plaintiff in the sum of five hundred ($500) dollars, or in any other sum.

3. Further answering, defendant alleges that the employee named in said count went on duty in the service of defendant at 9:45 A. M. of February 2, 1914, in the capacity of trainman on defendant's train, as alleged in plaintiff's complaint, and proceeded on said train to the station of Colton, California, at which place said employee was given a full and absolute release, during which time he was not [81] called upon to perform any duty in connection with his service as conductor, but was permitted to follow the suggestions of himself; that he was entirely relieved from the performance of any duty in connection with his employment by defendant for a period of one hour and thirty minutes; that said station at Colton is equipped with a restroom; that the trains operated by the employee named herein as soon as they reach the yards at Colton, are delivered to the yard crews and all work in connection with said trains is performed by crews entirely independent of the crews of which said Gibson was a member. [82]

For answer to plaintiff's seventh cause of action herein, defendant admits, denies, and alleges as follows:

1. Defendant denies that in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, the said defendant beginning at the hour of 3:10 A. M. of February 22, 1914, upon its line of railroad at and between the stations of Indio, in the State of California, and Los Angeles, in said State, within the jurisdiction of this court, required or permitted its certain engineer and employee, to wit, Chas. O. Wine, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 3:10 o'clock A. M. on said date, to the hour of 8:40 o'clock P. M. on said date.

2. Defendant denies that by reason of the alleged violation of said act of Congress, defendant is liable to plaintiff in the sum of five hundred ($500) dollars, or in any other sum.

3. Further answering, defendant alleges that the employee named in said cause of action went on duty in the service of defendant at 3:10 A. M. of February 22, 1914, in the capacity of engineer on defendant's train, as alleged in plaintiff's complaint, and proceeded on said train to the station of Colton, California, at which place said employee was given a full and absolute release, during which time he was not called upon to perform any duty in connection with his service as engineer [83] but was permitted to

follow the suggestions of himself; that he was entirely relieved from the performance of any duty in connection with his employment by defendant for a period of one hour and thirty minutes; that said station at Colton is equipped with a restroom; that the trains upon which the employee named herein was employed as soon as they reach the yards at Colton, are delivered to the yard crews and all work in connection with said trains is performed by crews entirely independent of the crews of which said Chas. O. Wine was a member.

4. And for a second and further defense, defendant alleges that all of the operation of the defendant's train, was interfered with by an unprecedented rainfall, which so injured and damaged defendant's tracks that it was impossible for said defendant to operate its trains in such manner as to comply with the rules and regulations relative to the sixteen-hour law; that said flood was unexpected, was an act of God, and could not in any manner be guarded against by this defendant. [84]

VIII.

For answer to plaintiff's eighth cause of action herein, defendant admits, denies, and alleges as follows:

1. Defendant denies that in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, the said defendant beginning at the hour of 3:10 A. M. of February 22, 1914, upon its line of railroad at and between the stations of

Indio, in the State of California, and Los Angeles, in said State, within the jurisdiction of this court, required or permitted its certain fireman and employee, to wit, P. T. Sherley, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 3:10 o'clock A. M. on said date, to the hour of 8:40 o'clock P. M. on said date.

2. Defendant denies that by reason of the alleged violation of said Act of Congress, defendant is liable to plaintiff in the sum of five hundred ($500) dollars, or in any other sum.

3. Further answering, defendant alleges that the employee named in said cause of action went on duty in the service of defendant at 3:10 A. M. of February 22, 1914, in the capacity of fireman on defendant's train, as alleged in plaintiff's complaint, and proceeded on said train to the station of Colton, California, at which place said employee was given a full and absolute release, during which time he was not called upon to perform any duty in connection with his service as fireman [85] but was permitted to follow the suggestions of himself; that he was entirely relieved from the performance of any duty in connection with his employment by defendant for a period of one hour and thirty minutes that said station at Colton is equipped with a restroom; that the trains upon which the employee named herein was employed as soon as they reach the yards at Colton, are delivered to the yard crews and all work in connection with said trains is performed by crews entirely inde-

pendent of the crews of which said P. T. Sherley was a member.

4. And for a second and further defense, defendant alleges that all of the operation of the defendant's train was interfered with by an unprecedented rainfall, which so injured and damaged defendant's tracks that it was impossible for said defendant to operate its trains in such manner as to comply with the rules and regulations relative to the sixteen-hour law that said flood was unexpected was an act of God, and could not in any manner be guarded against by this defendant. [86]

IX.

For answer to plaintiff's ninth cause of action herein, defendant admits, denies, and alleges as follows:

1. Defendant denies that in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, the said defendant beginning at the hour of 3:10 A. M. of February 22, 1914, upon its line of railroad at and between the stations of Indio, in the State of California, and Los Angeles, in said State, within the jurisdiction of this court, required or permitted its certain conductor and employee to wit, U. G. Gibson, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 3:10 o'clock A. M. on said date, to the hour of 8:40 o'clock P. M. on said date.

2. Defendant denies that by reason of the alleged

violation of said act of Congress, defendant is liable to plaintiff in the sum of five hundred ($500) dollars, or in any other sum.

3. Further answering, defendant alleges that the employee named in said cause of action went on duty in the service of defendant at 3:10 A. M. of February 22, 1914, in the capacity of conductor on defendant's train, as alleged in plaintiff's complaint, and proceeded on said train to the station of Colton, California, at which place said employee was given a full and absolute release during which time he was not called upon to perform any duty in connection with his service as conductor [87] but was permitted to follow the suggestions of himself; that he was entirely relieved from the performance of any duty in connection with his employment by defendant for a period of one hour and thirty minutes; that said station at Colton is equipped with a restroom; that the trains upon which the employee named herein was employed as soon as they reach the yards at Colton, are delivered to the yard crews and all work in connection with said trains is performed by crews entirely independent of the crews of which said U. G. Gibson was a member.

4. And for a second and further defense, defendant alleges that all of the operation of the defendant's train, was interfered with by an unprecedented rainfall, which so injured and damaged defendant's tracks that it was impossible for said defendant to operate its trains in such manner as to comply with the rules and regulations relative to the sixteen-hour law; that said flood was unexpected, was an act of

God, and could not in any manner be guarded against by this defendant. [88]

X.

For answer to plaintiff's tenth cause of action herein, defendant admits, denies, and alleges as follows:

1. Defendant denies that in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, the said defendant beginning at the hour of 3:10 o'clock A. M. of February 22, 1914, upon its line of railroad at and between the stations of Indio, in the State of California, and Los Angeles, in said State, within the jurisdiction of this court required or permitted its certain trainman and employee, to wit, W. M. Kinkade, to be and remain on duty as such for a longer period than sixteen consecutive hours to wit, from said hour of 3:10 o'clock A. M. on said date, to the hour of 8:40 o'clock P. M. on said date.

2. Defendant denies that by reason of the alleged violation of said Act of Congress, defendant is liable to plaintiff in the sum of five hundred ($500) dollars, or in any other sum.

3. Further answering, defendant alleges that the employee named in said cause of action went on duty in the service of defendant at 3:10 o'clock A. M. of February 22, 1914, in the capacity of trainman on defendant's train, as alleged in plaintiff's complaint, and proceeded on said train to the station of Colton, California, at which place said employee was given

a full and absolute release, during time *time* he was not called upon to perform any duty in connection with [89] his service as trainman, but was permitted to follow the suggestions of himself; that he was entirely relieved from the performance of any duty in connection with his employment by defendant for a period of one hour and thirty minutes; that said station at Colton is equipped with a restroom; that the trains upon which the employee named herein was employed as soon as they reach the yards at Colton are delivered to the yard crews and all work in connection with said trains is performed by crews entirely independed of the crews of which said W. M. Kinkade was a member.

4. For a second and further defense, defendant alleges that all of the operation of the defendant's train was interfered with by an unprecedented rainfall, which so injured and damaged defendant's tracks that it was impossible for said defendant to operate its trains in such manner as to comply with the rules and regulations relative to the sixteen-hour law; that said flood was unexpected, was an Act of God, and could not in any manner be guarded against by this defendant. [90]

XI.

For answer to plaintiff's XI cause of action herein, defendant admits, denies, and alleges as follows:

1. Defendant denies that in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, the said defendant beginning

at the hour of 3:10 o'clock A. M. of February 22, 1914, upon its line of railroad at and between the stations of Indio, in the State of California, and Los Angeles, in said State, within the jurisdiction of this court, required or permitted its certain trainman and employee, to wit, J. E. Pettijohn, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 3:10 o'clock A. M. on said date, to the hour of 8:40 o'clock P. M. on said date.

2. Defendant denies that by reason of the alleged violation of said Act of Congress, defendant is liable to plaintiff in the sum of five hundred ($500) dollars, or in any other sum.

3. Further answering, defendant alleges that the employee named in said cause of action went on duty in the service of defendant at 3:10 o'clock A. M. of February 22, 1914, in the capacity of trainman on defendant's train, as alleged in plaintiff's complaint, and proceeded on said train to the station of Colton, California, at which place said employee was given a full and absolute release, during time *time* he was not called upon to perform any duty in connection with [91] his service as trainman, but was permitted to follow the suggestions of himself; that he was entirely relieved from the performance of any duty in connection with his employment by defendant for a period of one hour and thirty minutes; that said station at Colton is equipped with a restroom; that the trains upon which the employee named herein was employed as soon as they reach the yards at Colton are delivered to the yard crews and all work

in connection with said trains is performed by crews entirely independed of the crews of which said Pettijohn was a member.

4. For a second and further defense, defendant alleges that all of the operation of the defendant's train, was interfered with by an unprecedented rainfall, which so injured and damaged defendant's tracks that it was impossible for said defendant to operate its trains in such manner as to comply with the rules and regulations relative to the sixteen-hour law; that said flood was unexpected, was an act of God, and could not in any manner be guarded against by this defendant. [92]

XII.

For answer to plaintiff's XII cause of action herein, defendant admits, denies, and alleges as follows:

1. Defendant denies that in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, the said defendant beginning at the hour of 3:10 o'clock A. M. of February 22, 1914, upon its line of railroad at and between the stations of Indio, in the State of California, and Los Angeles, in said State, within the jurisdiction of this court, required or permitted its certain trainman and employee, to wit, T. F. McBurney, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 3:10 o'clock A. M. on said date, to the hour of 8:40 o'clock P. M. on said date.

2. Defendant denies that by reason of the alleged violation of said Act of Congress, defendant is liable to plaintiff in the sum of five hundred ($500) dollars, or in any other sum.

3. Further answering, defendant alleges that the employee named in said cause of action went on duty in the service of defendant at 3:10 o'clock A. M. of February 22, 1914, in the capacity of trainman on defendant's train, as alleged in plaintiff's complaint, and proceeded on said train to the station of Colton, California, at which place said employee was given a full and absolute release, during time *time* he was not called upon to perform any duty in connection with [93] his service as trainman, but was permitted to follow the suggestions of himself; that he was entirely relieved from the performance of any duty in connection with his employment by defendant for a period of one hour and thirty minutes; that said station at Colton is equipped with a restroom; that the trains upon which the employee named herein was employed as soon as they reach the yards at Colton are delivered to the yard crews and all work in connection with said trains is performed by crews entirely independed of the crews of which said McBurney was a member.

4. For a second and further defense, defendant alleges that all of the operation of the defendant's train, was interfered with by an unprecedented rainfall, which so injured and damaged defendant's tracks that it was impossible for said defendant to operate its trains in such manner as to comply with the rules and regulations relative to the sixteen-hour

law that said flood was unexpected, was an act of God, and could not in any manner be guarded against by this defendant. [94]

XIII.

For answer to plaintiff's thirteenth cause of action herein, defendant admits, denies, and alleges as follows:

1. Defendant denies that in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, the said defendant, beginning at the hour of 1:30 o'clock A. M. on February 24, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Palm Springs, in said State, within the jurisdiction of this court, required or permitted its certain engineer and employee, to wit, Chas. H. Winters, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 1:30 o'clock A. M. on said date, to the hour of 6:50 o'clock P. M. on said date.

2. Defendant denies that by reason of the alleged violation of said Act of Congress, defendant is liable to plaintiff in the sum of five hundred ($500) dollars, or in any other sum.

3. Further answering, defendant alleges that the employee named in said cause of action went on duty in the service of defendant at 1:30 o'clock A. M. of said date in the capacity of engineer and proceeded with said train to the station of Colton, California,

at which time said employee was given a full and absolute release, during which time he was not called upon to perform any duty in connection with his service as trainman; but was permitted to follow the suggestions of himself; that he was entirely relieved from the performance of [95] any duty in connection with his employment by said defendant for a period of one hour and twenty minutes; that said station of Colton is equipped with a restroom; that the trains operated by the employee named herein as soon as they reach the yards at Colton, are delivered to the yard crews and all work in connection with said trains is performed by crews entirely independent of the crews of which said employee was a member. [96]

XIV.

For answer to plaintiff's fourteenth cause of action herein, defendant admits, denies, and alleges as follows:

1. Defendant denies that in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, the said defendant, beginning at the hour of 1:30 o'clock A. M. on February 24, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Palm Springs, in said State, within the jurisdiction of this court, required or permitted its certain fireman and employee, to wit, Geo. E. Hitchison, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour

of 1:30 o'clock A. M. on said date, to the hour of 6:50 o'clock P. M. on said date.

2. Defendant denies that by reason of the alleged violation of said Act of Congress, defendant is liable to plaintiff in the sum of five hundred ($500) dollars, or in any other sum.

3. Further answering, defendant alleges that the employee named in said cause of action went on duty in the service of defendant at 1:30 o'clock A. M. of said date in the capacity of fireman and proceeded with said train to the station of Colton, California, at which time said employee was given a full and absolute release, during which time he was not called upon to perform any duty in connection with his service as trainman; but was permitted to follow the suggestions of himself; that he was entirely relieved from the performance of [97] any duty in connection with his employment by said defendant for a period of one hour and twenty minutes; that said station of Colton is equipped with a restroom; that the trains operated by the employee named herein as soon as they reach the yards at Colton, are delivered to the yard crews and all work in connection with said trains is performed by crews entirely independent of the crews of which said employee was a member. [98]

XV.

For answer to plaintiff's fifteenth cause of action herein, defendant admits, denies, and alleges as follows:

1. Defendant denies that in violation of the Act of Congress known as "An Act to promote the safety

of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, the said defendant, beginning at the hour of 1:30 o'clock A. M. on February 24, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Palm Springs, in said State, within the jurisdiction of this court, required or permitted its certain conductor and employee, to wit, *Be.* W. Lindley, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 1:30 o'clock A. M. on said date, to the hour of 6:50 o'clock P. M. on said date.

2. Defendant denies that by reason of the alleged violation of said Act of Congress, defendant is liable to plaintiff in the sum of five hundred ($500) dollars, or in any other sum.

3. Further answering, defendant alleges that the employee named in said cause of action went on duty in the service of defendant at 1:30 o'clock A. M. of said date in the capacity of conductor and proceeded with said train to the station of Colton, California, at which time said employee was given a full and absolute release, during which time he was not called upon to perform any duty in connection with his service as trainman; but was permitted to follow the suggestions of himself; that he was entirely relieved from the performance of [99] any duty in connection with his employment by said defendant for a period of one hour and twenty minutes; that said station of Colton is equipped with a restroom; that the trains operated by the employee named herein

as soon as they reach the yards at Colton, are delivered to the yard crews and all work in connection with said trains is performed by crews entirely independent of the crews of which said employee was a member. **[100]**

XVI.

For answer to plaintiff's sixteenth cause of action, defendant admits, denies, and alleges as follows:

1. Defendant denies that in violation of the act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, the said defendant, beginning at the hour of 1:30 o'clock A. M., on February 24, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Palm Springs, in said State, within the jurisdiction of this court, required or permitted its certain trainman and employee, to wit, John T. Conley, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 1:30 o'clock A. M. on said date, to the hour of 6:50 o'clock P. M. on said date.

2. Defendant denies that by reason of the alleged violation of said Act of Congress, defendant is liable to plaintiff in the sum of five hundred ($500) dollars, or in any other sum.

3. Further answering, defendant alleges that the employee named in said cause of action went on duty in the service of defendant at 1:30 o'clock A. M. of said date in the capacity of trainman and proceeded with said train to the station of Colton,

California, at which time said employee was given a full and absolute release, during which time he was not called upon to perform any duty in connection with his service as trainman, but was permitted to follow the suggestions of himself; that he was entirely relieved from the performance of any duty in [101] connection with his employment by said defendant for a period of one hour and twenty minutes; that said station of Colton is equipped with a restroom; that the trains operated by the employee named herein, as soon as they reach the yards at Colton, are delivered to the yard crews and all work in connection with said trains is performed by crews entirely independent of the crews of which said employee was a member. [102]

XVII.

For answer to plaintiff's seventeenth cause of action, defendant admits, denies, and alleges as follows:

1. Defendant denies that in violation of the act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, the said defendant, beginning at the hour of 1:30 o'clock A. M., on February 24, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Palm Springs, in said State, within the jurisdiction of this court, required or permitted its certain trainman and employee, to wit, Bert F. Perry, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said

hour of 1:30 o'clock A. M. on said date, to the hour of 6:50 o'clock P. M. on said date.

2. Defendant denies that by reason of the alleged violation of said Act of Congress, defendant is liable to plaintiff in the sum of five hundred ($500) dollars, or in any other sum.

3. Further answering, defendant alleges that the employee named in said cause of action went on duty in the service of defendant at 1:30 o'clock A. M. of said date in the capacity of trainman and proceeded with said train to the station of Colton, California, at which time said employee was given a full and absolute release, during which time he was not called upon to perform any duty in connection with his service as trainman, but was permitted to follow the suggestions of himself; that he was entirely relieved from the performance of any duty in [103] connection with his employment by said defendant for a period of one hour and twenty minutes; that said station of Colton is equipped with a restroom; that the trains operated by the employee named herein, as soon as they reach the yards at Colton, are delivered to the yard crews and all work in connection with said trains is performed by crews entirely independent of the crews of which said employee was a member. [104]

XVIII.

For answer to plaintiff's eighteenth cause of action, defendant admits, denies, and alleges as follows:

1. Defendant denies that in violation of the act of Congress known as "An Act to promote the safety

of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, the said defendant, beginning at the hour of 1:30 o'clock A. M., on February 24, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Palm Springs, in said State, within the jurisdiction of this court, required or permitted its certain trainman and employee, to wit, James J. Jordan, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 1:30 o'clock A. M. on said date, to the hour of 6:50 o'clock P. M. on said date.

2. Defendant denies that by reason of the alleged violation of said Act of Congress, defendant is liable to plaintiff in the sum of five hundred ($500) dollars, or in any other sum.

3. Further answering, defendant alleges that the employee named in said cause of action went on duty in the service of defendant at 1:30 o'clock A. M. of said date in the capacity of trainman and proceeded with said train to the station of Colton, California, at which time said employee was given a full and absolute release, during which time he was not called upon to perform any duty in connection with his service as trainman, but was permitted to follow the suggestions of himself; that he was entirely relieved from the performance of any duty in [105] connection with his employment by said defendant for a period of one hour and twenty minutes; that said station of Colton is equipped with a restroom; that the trains operated by the employee

named herein, as soon as they reach the yards at Colton, are delivered to the yard crews and all work in connection with said trains is performed by crews entirely independent of the crews of which said employee was a member. [106]

XIX.

For answer to plaintiff's nineteenth cause of action, defendant admits, denies, and alleges as follows:

1. Defendant denies that in violation of the act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, said defendant, beginning at the hour of 1:55 o'clock A. M. on March 8, 1914, upon its line of railroad at and between the stations of Los Angeles in the State of California, and Indio, in said State, within the jurisdiction of this court, required or permitted its certain engineer and employee, to wit, Chas. H. Winters, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 1:55 o'clock A. M. on said date, to the hour of 7:00 o'clock P. M. on said date.

2. Defendant denies that by reason of the alleged violation of said Act of Congress, defendant is liable to plaintiff in the sum of five hundred ($500) dollars, or in any other sum.

3. Further answering, defendant alleges that the employee named in said cause of action went on duty in the service of defendant at 1:55 A. M. of said date in the capacity of engineer and proceeded with said train to the station of Colton, California, at which place said employee was given

a full and absolute release, during which time he was not called upon to perform any duty in connection with his service as engineer, but was permitted to follow the suggestions of himself; that he was entirely relieved from the performance [107] of any duty in connection with his employment by said defendant for a period of one hour and twenty minutes; that said station of Colton is equipped with a restroom; that the trains operated by the employee named herein as soon as they reach the yards at Colton, are delivered by the yard crews and all work in connection with the said trains is performed by crews entirely independent of the crews of which said employee was a member. [108]

XX.

For answer to plaintiff's twentieth cause of action, defendant admits, denies, and alleges as follows:

1. Defendant denies that in violation of the act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, the said defendant, beginning at the hour of 1:55 o'clock A. M. on March 8, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, required or permitted its certain fireman and employee, to wit, Wayland Ross, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 1:55 o'clock

A. M. on said date, to the hour of 7:00 o'clock P. M. on said date.

2. Defendant denies that by reason of the alleged violation of said Act of Congress, defendant is liable to plaintiff in the sum of five hundred ($500) dollars, or in any other sum.

3. Further answering, defendant alleges that the employee named in said cause of action went on duty in the service of defendant at 1:55 A. M. of said date in the capacity of fireman and proceeded with said train to the station of Colton, California, at which place said employee was given a full and absolute release, during which time he was not called upon to perform any duty in connection with his service as fireman, but was permitted to follow the suggestions of himself; that he was entirely relieved from the performance [109] of any duty in connection with his employment by said defendant for a period of one hour and twenty minutes; that said station of Colton is equipped with a restroom; that the trains operated by the employee named herein as soon as they reach the yards at Colton, the delivered by the yard crews and all work in connection with the said trains is performed by crews entirely independent of the crews of which said employee was a member. [110]

XXI.

For answer to plaintiff's twenty-first cause of action, defendant admits, denies, and alleges as follows:

1. Defendant denies that in violation of the act of Congress known as "An Act to promote the safety

of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, the said defendant, beginning at the hour of 1:55 o'clock A. M. on March 8, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, required or permitted its certain conductor and employee, to wit, U. G. Gibson, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 1:55 o'clock A. M. on said date, to the hour of 7:00 o'clock P. M. on said date.

2. Defendant denies that by reason of the alleged violation of said Act of Congress, defendant is liable to plaintiff in the sum of five hundred ($500) dollars, or in any other sum.

3. Further answering, defendant alleges that the employee named in said cause of action went on duty in the service of defendant at 1:55 A. M. of said date in the capacity of conductor and proceeded with said train to the station of Colton, California, at which place said employee was given a full and absolute release, during which time he was not called upon to perform any duty in connection with his service as conductor, but was permitted to follow the suggestions of himself; that he was entirely relieved from the performance [111] of any duty in connection with his employment by said defendant for a period of one hour and twenty minutes; that said station of Colton is equipped with a restroom; that the trains operated by the employee named

herein as soon as they reach the yards at Colton, are delivered by the yard crews and all work in connection with the said trains is performed by crews entirely independent of the crews of which said employee was a member. [112]

XXII.

For answer to plaintiff's XXII cause of action, defendant admits, denies, and alleges as follows:

1. Defendant denies that in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, said defendant, beginning at the hour of 1:55 o'clock A. M. on March 8, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, required or permitted its certain trainman and employee, to wit, W. M. Kinkade, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 1:55 o'clock A. M. on said date, to the hour of 7:00 P. M. on said date.

2. Defendant denies that by reason of the alleged violation of said Act of Congress, defendant is liable to plaintiff in the sum of five hundred ($500) dollars, or in any other sum.

3. Further answering, defendant alleges that the employee named in said cause of action went on duty in the service of trainman and proceeded with said train to the station of Colton, California, at which place said employee was given a full and ab-

solute release, during which time he was not called upon to perform any duty in connection with his service as trainman but was permitted to follow the suggestions of himself; that he was entirely relieved from the performance of **[113]** any duty in connection with his employment by said defendant for a period of one hour and twenty minutes; that said station of Colton is equipped with a rest-room; that the trains operated by the employee named herein as soon as they reached the yards at Colton, are delivered to the yard crews and all work in connection with the said trains is performed by crews entirely independent of the crews of which said employee was a member. **[114]**

XXIII.

For answer to plaintiff's XXIII cause of action, defendant admits, denies, and alleges as follows:

1. Defendant denies that in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, said defendant, beginning at the hour of 1:55 o'clock A. M. on March 8, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, required or permitted its certain trainman and employee to wit, C. S. Courtney to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 1:55 o'clock A. M. on said date, to the hour of 7:00 P. M. on said date.

2. Defendant denies that by reason of the alleged violation of said Act of Congress, defendant is liable to plaintiff in the sum of five hundred ($500) dollars, or in any other sum.

3. Further answering, defendant alleges that the employee named in said cause of action went on duty in the service of trainman and proceeded with said train to the station of Colton, California, at which place said employee was given a full and absolute release, during which time he was not called upon to perform any duty in connection with his service as trainman but was permitted to follow the suggestions of himself; that he was entirely relieved from the performance of **[115]** any duty in connection with his employment by said defendant for a period of one hour and twenty minutes; that said station of Colton is equipped with a rest-room; that the trains operated by the employee named herein as soon as they reached the yards at Colton, are delivered to the yard crews and all work in connection with the said trains is performed by crews entirely independent of the crews of which said employee was a member. **[116]**

XXIV.

For answer to plaintiff's XXIV cause of action,

1. Defendant denies that in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, said defendant, beginning at the hour of 1:55 o'clock A. M. on March 8, 1914, upon its line of railroad at and be-

tween the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, required or permitted its certain trainman and employee, to wit, R. M. Sutherland to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 1:55 o'clock A. M. on said date, to the hour of 7:00 P. M. on said date.

2. Defendant denies that by reason of the alleged violation of said Act of Congress, defendant is liable to plaintiff in the sum of five hundred ($500) dollars, or in any other sum.

3. Further answering, defendant alleges that the employee named in said cause of action went on duty in the service of trainman and proceeded with said train to the station of Colton, California, at which place said employee was given a full and absolute release, during which time he was not called upon to perform any duty in connection with his service as trainman but was permitted to follow the suggestions of himself; that he was entirely relieved from the performance of **[117]** any duty in connection with his employment by said defendant for a period of one hour and twenty minutes; that said station of Colton is equipped with a rest-room; that the trains operated by the employee named herein as soon as they reached the yards at Colton, are delivered to the yard crews and all work in connection with the said trains is performed by crews entirely independent of the crews of which said employee was a member. **[118]**

XXV.

For answer to plaintiff's XXV cause of action, herein, defendant admits, denies, and alleges as follows:

1. Defendant denies that in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, said defendant, beginning at the hour of 7:30 o'clock P. M. on March 12, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, required and permitted its certain engineer and employee, to wit, E. J. Danfelser to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 7:30 o'clock P. M. on said date, to the hour of 12:25 o'clock P. M. on March 13, 1914.

2. Defendant denies that by reason of the alleged violation of said Act of Congress, defendant is liable to plaintiff in the sum of five hundred ($500) dollars, or in any other sum.

3. Further answering, defendant alleges that the employee named in said cause of action went on duty in the service of defendant at 7:30 o'clock P. M. of said date in the capacity of engineer and proceeded with said train to the station of Colton, California, at which place said employee was given a full and absolute release, during which time he was not called upon to perform any duty in connection with his service as engineer but was permitted to follow the

suggestions [119] of himself; that he was entirely relieved from the performance of any duty in connection with his employment by said defendant for a period of one hour; that said station of Colton is equipped with a restroom; that the trains operated by the employee named herein as soon as they reaced the yards at Colton, are delivered to the yard crews and all work in connection with the said trains is performed by crews entirely independent of the crews of which said employee was a member. [120]

XXVI.

For answer to plaintiff's XXVI cause of action herein, defendant admits, denies, and alleges as follows:

1. Defendant denies that in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, said defendant, beginning at the hour of 7:30 o'clock P. M. on March 12, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, required and permitted its certain fireman and employee, to wit, O. O. McConnell, to be and remain on duty as such for a longer than sixteen consecutive hours, to wit, from said hour of 7:30 o'clock P. M., on said date, to the hour of 12:25 o'clock P. M. on March 13, 1914.

2. Defendant denies that by reason of the alleged violation of said Act of Congress, defendant is liable

to plaintiff in the sum of five hundred ($500) dollars, or in any other sum.

3. Further answering, defendant alleges that the employee named in said cause of action went on duty in the service of defendant at 7:30 o'clock P. M. of said date in the capacity of fireman and proceeded with said train to the station of Colton, California, at which place said employee was given a full and absolute release, during which time he was not called upon to perform any duty in connection with his service as fireman, but was permitted to follow the suggestions **[121]** of himself; that he was entirely relieved from the performance of any duty in connection with his employment by said defendant for a period of one hour; that said station of Colton is equipped with a restroom; that the trains operated by the employee named herein, as soon as they reach the yards at Colton, are delivered to the yard crews and all work in connection with the said trains is performed by crews entirely independent of the crews of which said employee was a member. **[122]**

XXVII.

For answer to plaintiff's XXVII cause of action herein, defendant admits, denies, and alleges as follows:

1. Defendant denies that, in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, said defendant, beginning at the hour of 7:30 o'clock P. M. on March 12, 1914,

upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, required and permitted its certain conductor and employee, to wit, U. G. Gibson, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 7:30 o'clock P. M. on said date, to the hour of 12:25 o'clock P. M., on March 13, 1914.

2. Defendant denies that, by reason of the alleged violation of said Act of Congress, defendant is liable to plaintiff in the sum of five hundred ($500) dollars, or in any other sum.

3. Further answering, defendant alleges that the employee named in said cause of action went on duty in the service of defendant at 7:30 o'clock P. M., of said date in the capacity of conductor and proceeded with said train to the station of Colton, California, at which place said employee was given a full and absolute release, during which time he was not called upon to perform any duty in connection with his service as conductor, but was permitted to follow the suggestions **[123]** of himself; that he was entirely relieved from the perfomance of any duty in connection with his employment by said defendant for a period of one hour; that said station of Colton is equipped with a restroom; that the trains operated by the employee named herein, as soon as they reach the yards at Colton, are delivered to the yard crews and all work in connection with the said trains is performed by crews entirely independent of the crews of which said employee was a member. **[124]**

XXVIII.

For answer to plaintiff's twenty-eighth cause of action, defendant admits, denies, and alleges as follows:

1. Defendant denies that, in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, said defendant, beginning at the hour of 7:30 o'clock P. M. on March 12, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, required and permitted its certain trainman and employee, to wit, W. M. Kinkade, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 7:30 o'clock P. M. on said date, to the hour of 12:25 o'clock P. M. on March 13, 1914.

2. Defendant denies that, by reason of the alleged violation of said Act of Congress, defendant is liable to plaintiff in the sum of five hundred ($500) dollars, or in any other amount.

3. Further answering, defendant alleges that the employee named in said cause of action, went on duty in the service of defendant at 7:30 o'clock P. M. of said date in the capacity of trainman and proceeded with said train to the station of Colton, California, at which place said employee was given a full and absolute release, during which time he was not called upon to perform any duty in connection with his service as trainman, but was permitted to follow the

[125] suggestions of himself; that he was entirely relieved from the performance of any duty in connection with his employment by said defendant for a period of one hour; that said station of Colton is equipped with a restroom; that the trains operated by the employee named herein as soon as they reach the yards at Colton, are delivered to the yard crews and all work in connection with the said trains is performed by crews entirely independent of the crews of which said employee was a member. [126]

XXIX.

For answer to plaintiff's twenty-ninth cause of action, defendant admits, denies, and alleges as follows:

1. Defendant denies that, in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, said defendant, beginning at the hour of 7:30 o'clock P. M. on March 12, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, required and permitted its certain trainman and employee, to wit, C. S. Courtney, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 7:30 o'clock P. M.

2. Defendant denies that, by reason of the alleged violation of said Act of Congress, defendant is liable to plaintiff in the sum of five hundred ($500) dollars, or in any other amount.

3. Further answering, defendant alleges that the employee named in said cause of action, went on duty in the service of defendant at 7:30 o'clock P. M. of said date in the capacity of trainman and proceeded with said train to the station of Colton, California, at which place said employee was given a full and absolute release, during which time he was not called upon to perform any duty in connection with his service as trainman, but was permitted to follow the [127] suggestions of himself; that he was entirely relieved from the performance of any duty in connection with his employment by said defendant for a period of one hour; that said station of Colton is equipped with a restroom; that the trains operated by the employee named herein as soon as they reach the yards at Colton, are delivered to the yard crews and all work in connection with the said trains is performed by crews entirely independent of the crews of which said employee was a member. [128]

XXX.

For answer to plaintiff's thirtieth cause of action, defendant admits, denies, and alleges as follows:

1. Defendant denies that, in violation of the Act of Congress known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, said defendant, beginning at the hour of 7:30 o'clock P. M. on March 12, 1914, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Indio, in said State, within the jurisdiction of this court, required and permitted its certain trainman and

employee, to wit, R. M. Southerland, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 7:30 o'clock P. M.

2. Defendant denies that, by reason of the alleged violation of said Act of Congress, defendant is liable to plaintiff in the sum of five hundred ($500) dollars, or in any other amount.

3. Further answering, defendant alleges that the employee named in said cause of action, went on duty in the service of defendant at 7:30 o'clock P. M. of said date in the capacity of trainman and proceeded with said train to the station of Colton, California, at which place said employee was given a full and absolute release, during which time he was not called upon to perform any duty in connection with his service as trainman, but was permitted to follow the [129] suggestions of himself; that he was entirely relieved from the performance of any duty in connection with his employment by said defendant for a period of one hour; that said station of Colton is equipped with a restroom; that the trains operated by the employee named herein as soon as they reach the yards at Colton, are delivered to the yard crews and all work in connection with the said trains is performed by crews entirely independent of the crews of which said employee was a member. [130]

WHEREFORE, defendant prays that plaintiff take nothing by this action, and that it recover its costs herein expended, and for such other and fur-

ther relief as it may be justly entitled to in the premises.

HENRY T. GAGE,
W. I. GILBERT,
Attorneys for Defendant.

State of California,
County of Los Angeles,—ss.

W. I. Gilbert, being first duly sworn, deposes and says: I am one of the attorneys for defendant in the above-entitled action; that I have read the within and foregoing answer, know the contents thereof, and that the same is true of my own knowledge except as to those matters and things which are therein stated upon information or belief, and as to those matters and things, I believe it to be true.

That he makes this verification for the reason that the officers of said corporation are absent from the county of Los Angeles, State of California.

W. I. GILBERT.

Subscribed and sworn to before me this 22d day of October, 1915.

[Seal] C. F. CABLE,
Notary Public in and for the County of Los Angeles, State of California. [131]

[Endorsed]: Original. No. 345—Civil. In the United States District Court, Southern District of California, Southern Division. The United States of America, Plaintiff, vs. Southern Pacific Company, a Corporation, Defendant. Amended Answer. Service of the within Amended Answer is hereby admitted this 23 day of October, 1915. Roscoe F.

Walter, Attorney for Plaintiff. Filed Oct. 25, 1915. Wm. M. Van Dyke, Clerk. By Floyd S. Sisk, Deputy Clerk. Henry T. Gage and W. I. Gilbert, 1208–10 Merchants Nat'l Bank Bldg., Sixth and Spring Streets, Los Angeles, Cal., Attorneys for Defendant. [132]

In the District Court of the United States, in and for the Southern District of California, Southern Division.

No. 345—CIVIL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY,

Defendant.

Demurrer.

Comes now the plaintiff, United States Attorney, by its attorney, Albert Schoonover, Esquire, United States Attorney for the Southern District of California, and demurs to paragraph IV of defendant's answer as to counts 7, 8, 9, 10, 11 and 12 of plaintiff's petition, for the reason that the facts and statements therein contained are not sufficient in law to constitute a defense to plaintiff's causes of action contained in said counts of said petition for the following reasons, to wit:

1st. That said paragraph IV does not allege that the alleged excess service was the result of the unprecedented rainfall and flood, set forth in said paragraph of defendant's answer.

2d. That said paragraph IV does not allege the date or dates on which said unprecedented rainfall and flood occurred.

3d. That said paragraph IV does not allege that said rainfall and flood occurred subsequent to the time of the departure of the crew in charge of defendant's train Extra [133] 2765, on February 27, 1914, from Los Angeles, in the State of California, and that such rainfall and flood could not have been foreseen by the carrier, its officers and agents in charge of said crew at the time said crew left Los Angeles on February 27, 1914.

ALBERT SCHOONOVER,
United States Attorney.
ROBERT O'CONNOR,
Assistant U. S. Attorney.
ROSCOE F. WALTER,
Special Assistant to the United States Attorney.

[Endorsed]: No. 345—Civil. In the District Court of the United States for the South. Dist. of California, Southern Division. United States of America, Plaintiff, vs. Southern Pacific Company, Defendant. Demurrer. Filed Oct. 25, 1915. Wm. M. Van Dyke, Clerk. By Floyd S. Sisk, Deputy. [134]

In the District Court of the United States, Southern District of California, Southern Division.

No. 345—CIVIL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY (a Corporation),

Defendant.

Defendant's Second Amended Answer to the Ninth Cause of Action in Plaintiff's Complaint.

Comes now the defendant, Southern Pacific Company, leave of the Court being first had and obtained and files this its Second Amended Answer to the Ninth Cause of Action in plaintiff's complaint and for such cause of action, admits, denies, and alleges as follows:

1. Defendants adopts all of those paragraphs in its First Amended Answer, the same as if set out in full in this amendment.

2. And defendant further alleges as follows: That on the 19th, 20th, 21st and 22d days of February, A. D. 1914, a heavy and unprecedented rainfall occurred in the vicinity of the territory covered by the Southern Pacific Company's tracks between the city of Los Angeles and the city of Colton; that because and as a direct result of said rainfall, all of the track, roadbed and other track equipment of the defendant, Southern Pacific Company, became soft and uncertain and it was [135] impossible for this de-

fendant to know, with any degree of certainty the exact time within which any number of miles could be made over said track; that the said unprecedented flood was an act of God, and the exact condition of the track, roadway and roadbed of the defendant company could not be ascertained or known by said defendant, nor could the exact time which would be necessary to operate a train over said damaged track be foreseen; that it became and was necessary at the time and after the said trains left said terminal for the employees of said company to exercise their own best judgment, after being immediately upon the track, as to the length of time to be consumed by them, between given points, or the speed to be traveled by defendant's trains.

And defendant further alleges that any delay which occurred in the operation of the trains mentioned in said count of plaintiff's complaint, could not have been foreseen or guarded against by the defendant company, because of the fact that it could not be ascertained at any given point on said track, the length of time which would be consumed in reaching another given point.

HENRY T. GAGE and
W. I. GILBERT,
Attorneys for Defendant.

[Endorsed]: No. 345—Civil. In the United States District Court, Southern District of California, Southern Division. United States of America, Plaintiff, vs. Southern Pacific Company, a Corporation, Defendant. Defendant's Second Amended Answer to the Ninth Count of Plaintiff's Complaint.

Copy of the within Answer is hereby admitted 27th day of October, 1915. Albert Schoonover, R. F. Walter, Attorneys for Plaintiff. Filed Oct. 27, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Henry T. Gage & W. I. Gilbert, 1208–10 Merchants Nat'l Bank Bldg., Sixth and Spring Streets, Los Angeles, Cal., Attorneys for Defendant. [136]

In the District Court of the United States, Southern District of California, Southern Division.

No. 345—CIVIL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,

Defendant.

Defendant's Second Amended Answer to the Ninth Count in Plaintiff's Complaint.

Comes now the defendant, Southern Pacific Company, leave of the Court being first had and obtained, and files this its second Amended Answer to the ninth cause of action of plaintiff's complaint, and for such amendment, admits, denies and alleges as follows:

For a second, separate and further defense to said ninth cause of action, defendant alleges that on the 19th, 20th, 21st and 22d days of February, A. D. 1914, a heavy and unprecedented rainfall occurred in the vicinity of the territory covered by the Southern

Pacific Company's tracks between the city of Los Angeles, and the city of Colton; that because and as a direct result of said rainfall, all of the track, roadbed and other track equipment of the defendant Southern Pacific Company, became soft and uncertain, and it was impossible for this defendant to know, with any degree of certainty, the exact time within which any number of miles could be made over said track; that the said unprecedented flood was an act of God, and the exact condition of the track, roadway and roadbed of the defendant could not be ascertained or known by said defendant company, [137] nor could the exact time which would be necessary to operate a train over said damaged track be foreseen; that it became and was necessary at the time and after the said trains left said terminal for the employees of said company to exercise their own best judgment, after being immediately upon the track, as to the length of time to be consumed by them, between given points, or the speed to be traveled by defendant's trains.

And defendant further alleges that any delay which occurred in the operation of the train mentioned in said count of plaintiff's complaint, could not have been foreseen or guarded against by the defendant company, because of the fact that it would not be ascertained at any given point on said track, the length of time which would be consumed in reaching another given point.

HENRY T. GAGE and
W. I. GILBERT,
Attorneys for Defendant.

[Endorsed]: Original. No. 345–Civil. In the United States District Court, Southern District of California, Southern Division. United States of America, Plaintiff, vs. Southern Pacific Company, a Corporation, Defendant. Defendant's Second Amended Answer to the Ninth Count of Plaintiff's Complaint. Filed Oct. 25th, 1915. Wm. M. Van Dyke, Clerk. By Floyd S. Sisk, Deputy Clerk. Henry T. Gage and W. I. Gilbert, 1208–10 Merchants Nat'l. Bank Bldg., Sixth and Spring Streets, Los Angeles, Cal., Attorneys for Defendant. **[138]**

In the District Court of the United States, in and for the Southern District of California, Southern Division.

No. 345—CIVIL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY,

Defendant.

Demurrer to Second Amended Answer.

Comes now the plaintiff, United States Attorney, by its attorney Albert Schoonover, Esquire, United States Attorney for the Southern District of California, and demurs to paragraphs two and three of the defendant's second amended answer to the seventh, eighth, ninth, tenth, eleventh and twelfth counts of the plaintiff's cause of action, for the reason that the facts and statements therein con-

tained are not sufficient in law to constitute a defense to plaintiff's causes of action contained in said counts of said petition, for the following reasons:

1st. That said paragraphs do not allege that the alleged excess service was the result of the unprecedented rainfall and flood that occurred on the dates mentioned in said paragraphs, to wit, the 19th, 20th, 21st and 22d days of February, 1914.

2d. That said paragraphs show the date or dates of said unprecedented rainfall and flood to have been prior to the date on which defendant's train Extra 2765, Los Angeles to Indio on February 27, 1914. **[139]**

3d. That said paragraphs two and three set up facts and circumstances occurring prior to the date of the departure of said train from Los Angeles, and were known to the defendant, its officers and agents in charge of said train at the time said train left the terminal at Los Angeles and consequently do not constitute any casualty, unavoidable accident, act of God, not known to the carrier and its officers or agents in charge of said crew at the time said crew left the terminal at Los Angeles.

ALBERT SCHOONOVER,
United States Attorney.
ROBERT O'CONNOR,
Assistant U. S. Attorney.
ROSCOE F. WALTER,
Special Assistant to the United States Attorney.

[Endorsed]: Original. No. 345—Civil. U. S. Dist. Court, So. Dist. of Cal., So. Div. The United Statse of America vs. Southern Pacific Co. Demur-

rer. Filed Oct. 25, 1915. Wm. M. Van Dyke, Clerk. By Floyd S. Sisk, Deputy Clerk. [140]

In the District Court of the United States, in and for the Southern District of California, Southern Division.

No. 345—CIVIL.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,

Defendant.

Verdict.

We, the jury in the above-entitled cause, find in favor of the defendant, Southern Pacific Company, a corporation.

Los Angeles, Cal., Oct. 27, 1915.

GEO. F. GUY,
Foreman.

[Endorsed]: 345—Civ. U. S. Dist. Court, So. Dist. Cal., So. Div. The United States of America, vs. The Southern Pacific Company, a Corporation. Verdict. Filed Oct. 27, 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. [141]

UNITED STATES OF AMERICA.

District Court of the United States, Southern District of California, Southern Division.

No. 345—CIVIL.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

THE SOUTHERN PACIFIC COMPANY, a Corporation,
Defendant.

Judgment.

This cause coming on regularly on Thursday, the 21st day of October, 1915, being a day in the July term, A. D. 1915, of the District Court of the United States for the Southern District of California, Southern Division, to be tried by the Court and a jury to be duly impanelled; Roscoe F. Walter, Esq., Special Assistant to the U. S. Attorney General, appearing as counsel for the United States; W. I. Gilbert, Esq., appearing as counsel for the Defendant; and a jury of twelve (12) men having been duly impanelled, and the trial having been proceeded with on said 21st day of October, 1915, and the following 25th and 27th days of October, 1915; and oral and documentary evidence having been received on behalf of the respective parties; and this cause having been argued to the jury by respective counsel, and having, on said 27th day of October, 1915, been submitted to the jury for its consideration, and the jury having thereafter,

on said 27th day of October, 1915, rendered the following verdict to wit: [142]

"In the District Court of the United States, in and for the Southern District of California, Southern Division.

No. 345—CIVIL.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
Defendant.

Verdict.

We, the jury in the above-entitled cause, find in favor of the defendant, Southern Pacific Company, a corporation.

Los Angeles, Cal., Oct. 27, 1915.

GEO. F. GUY,
Foreman."

—and the Court having ordered that Judgment be entered herein in accordance with said verdict;

NOW, THEREFORE, by virtue of the law, and by reason of the premises aforesaid, it is considered by the Court that The United States of America, Plaintiffs herein, take nothing by this, their action, and that The Southern Pacific Company, a Corporation, defendant herein, go hereof without day.

JUDGMENT ENTERED OCTOBER 30, 1915.
WM. M. VAN DYKE,
Clerk.
By Leslie S. Colyer,
Deputy Clerk.

[Endorsed]: No. 345—Civil. United States District Court, Southern District of California, Southern Division. The United States of America, vs. The Southern Pacific Company. Copy of Judgment. Filed Oct. 30, 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. [143]

Instructions Given by the Court.

This is a civil action and not a criminal action. The complaint is divided into thirty counts, or separate causes of action, each of which alleges a separate violation of the Statute, which I will hereafter refer to. The defendant, in its answer, has denied certain allegations in the complaint. That is to say, the defendant has denied that it has violated the law in regard to keeping its employees on duty longer than sixteen consecutive hours in any period of twenty-four hours, or longer than sixteen hours in the aggregate in any twenty-four hour period.

As to the issues in the complaint denied by the answer. The burden of proving the same is upon the plaintiff. That is to say, the plaintiff must sustain such allegations by a preponderance of the evidence. A preponderance of the evidence does not mean most of the witnesses or most evidence, but it means evidence which satisfies you as to the weight thereof.

In addition to the answer denying the allegations in the complaint, the defendant has also pleaded as to counts 7, 8, 9, 10, 11 and 12, a special answer, which the defendant claims brings the case within the proviso of the Statute which I will hereafter refer to. The defendant alleges that the delay and the retention of the employees for the length of time they were retained in service at the time in question, was either caused by the act of God, or was the result of a cause not known to the defendant or its officer or agent at the time the employees left a terminal.

You need not consider this special answer until you have first determined that the plaintiff has sustained the burden of proving the facts alleged in the complaint and denied by the answer. If you determine primarily that the plaintiff has [144] sustained the burden of proof concerning the facts alleged in the complaint, then you may consider this further or special answer of the defendant. In considering this further or special answer, the defendant has to sustain the burden of proof. In other words, if the plaintiff has sustained the burden of proof as to the allegations in the complaint, and you have to consider this special answer, then you must consider whether or not the weight of the evidence preponderates in favor of this special answer.

You are instructed that by the term "act of God" is meant those effects and occurrences which proceed from natural causes and cannot be anticipated and guarded against or resisted, such as unprecedented storms or freshets, lightning, earthquake, etc. On this defense, as I have heretofore stated to you, the

defendant assumes the burden of proof to the extent that it must prove by a preponderance of evidence that the storm was of such violence and unprecedented nature that no ordinary and reasonable amount of care would have prevented the delay. Therefore, if the plaintiff has established by a preponderance of the evidence that the defendant violated the hours of service law, as alleged in the complaint, then the burden of the proof is upon the defendant to prove by a preponderance of evidence that the storm in question was of sufficient violence to have caused the delay alleged in the complaint.

The defendant also claims that the retention of the men in service was the result of the track being soft by reason of the floods, and that it could not be foreseen before the men left the terminal that this delay would occur. On that branch [145] of the answer the defendant must also show by a preponderance of the evidence that such was the fact, and that such soft track was a cause not known to the defendant or its officers or agents in charge of such employees at the time the said employees left the terminal, and it could not have been foreseen.

The law which the plaintiff claims the defendant violated, in so far as it is necessary for you to consider the same, is as follows:

> "That it shall be unlawful for any common carrier, its officers or agents, subject to this Act to require or permit any employee subject to this Act to be or remain on duty for a longer period than sixteen consecutive hours, and whenever any such employee of such common car-

rier shall have been continuously on duty for sixteen hours, he shall be relieved and not required or permitted again to go on duty until he has had at least ten consecutive hours off duty; and no such employee who has been on duty sixteen hours in the aggregate in any twenty-four-hour period, shall be required or permitted to continue, or again go on duty without having had at least eight consecutive hours off duty."

There is a proviso in the law which reads as follows:

"Provided, That the provisions of this Act shall not apply in any case of casualty or unavoidable accident, or the act of God; nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of such employee at the time said employee left a terminal, and which could not have been foreseen." [146]

You will see that the law contemplates two classes of service as to the time employed—one class where there are sixteen consecutive hours of labor within a period of twenty-four hours. In such a case there are ten consecutive hours off duty. The other class of service is where there are sixteen hours of labor, in the aggregate, in any twenty-four hour period, in which case there must be eight consecutive hours off duty. The law, therefore, contemplates that there may be a class of service where there may be a break in the service of a shorter duration than the prescribed periods of rest of ten and eight hours, re-

spectively. Where the service is for sixteen hours in the aggregate in any twenty-four hour period, that is where the service is not sixteen consecutive hours, the off-duty periods must be such, between the periods of service, that the employee may have a reasonable opportunity for rest or recreation, as I will more particularly point out to you hereafter.

The plaintiff claims that this case falls within the first class above designated, while the defendant claims that it falls within the second class. That is to say, the defendant claims that the men were not on duty more than sixteen hours in the aggregate in the twenty-four hour period, while the plaintiff claims the men were on duty more than sixteen consecutive hours, or sixteen hours in the aggregate in a twenty-four hour period.

The plaintiff does not claim that the provision of the law in regard to having ten consecutive hours off duty, was violated, nor that the defendant violated the provision of the Act concerning eight hours off duty, as above set forth. The defendant does not claim that the period for which the employee was released from duty at Colton could either be counted as a part of [147] the ten hours off duty or of the eight hours off duty, as set forth in the law. The defendant contends that the time of release from duty, at Colton, was such a break in the hours of service that it brings the case within the second class of cases where the hours of duty shall not be more than sixteen hours in the aggregate, and claims that there were not more than sixteen hours of duty per-

formed by the employee, in the twenty-four hour period.

Under the hours of Service Act, which has been partially read to you, when several employees are kept on duty beyond the specified time of sixteen hours, a separate penalty is incurred for the detention of each employee, although by reason of the same delay of a train.

Each overworked railway employee presents towards the public a distinct source of danger, and a distinct wrong to the employee.

The wrongful act, under the Statute, is not the delay of the train, but the retention of the employee; and the principle that under one act having several consequences, which the law seeks to prevent there is but one liability attached thereto, does not apply.

An employee who is waiting for the train to move, and liable to be called, and who is not permitted to go away, is on duty within the meaning of the hours of Service Act.

The penalty under the Act, not being in the nature of a compensation to the employee but punitive and measured by the harm done, is to be determined by the Judge, and not by the jury. So if you should find for the plaintiff you need not consider the penalty. [148]

There may be cases where the release from duty of an employee of a Railroad Company, is so brief, or where the circumstances are such that the Judge may say that the claim that the continuity of the hours of service has been broken, would be a mere sham and a pretense, and the Court would not recog-

nize such a case as being a compliance with the law. On the other hand, there may be cases where the release from service of the employee, is of such length of time, and is surrounded by such circumstances that the Court could say that no fair minded man could dispute the statement that the employee had a fair and reasonable opportunity for rest and recreation, and that the law in such cases had been complied with. Then there may be other cases, where neither of these extremes exist; cases that occupy the middle ground between these extremes; cases where, although there may not be any dispute as to the facts of the case, it is necessary to apply the proven circumstances to the situation in order to determine whether or not the law has been complied with. I have decided that this case occupies the third situation described. That is to say, it falls within that twilight zone between the two extremes, as above described. I therefore instruct you that you are to apply the probative facts and the proven circumstances in this case, to the situation, and determine whether or not, during the time the employees were released, they had a reasonable and fair opportunity for rest and recreation.

In determining whether or not the men had a reasonable opportunity for rest and recreation during the time that they were released from duty, you shall take into consideration all the facts and circumstances connected with such release; whether it was a release in good faith, and whether or not the [149] men had, during the time they were released, a right to do as they pleased; whether they were masters of

their own time, and whether they really had a substantial and opportune period of rest. If you find, as aforesaid, that the release from duty at Colton, was a break in the hours of service, within the meaning of the law as I have explained it to you, then you should find for the defendant upon that issue, but if, on the other hand, you should find that the employees were not released in such a manner that they were masters of their own time and did not have a reasonable and fair opportunity for rest or recreation, you should find for the plaintiff upon that issue.

The parties have entered into a stipulation, in writing, concerning many facts involved in this case. This stipulation will be handed to you for you to take and to have with you during your consultation. This stipulation, in so far as it covers the case, is binding upon both parties and you cannot consider that anything in it is erroneous. In addition to this stipulation of facts, certain evidence has been introduced, which you will consider in connection with such stipulation, but you cannot regard such evidence as being contrary to such stipulation.

[Endorsed]: No. 345—Civil. U. S. Dist. Court, So. Dist. of Cal., So. Div. United States of America vs. Southern Pacific Co. Instructions Given by the Court. Filed Oct. 27, 1915. Wm. M. Van Dyke, Clerk. By Floyd S. Sisk, Deputy Clerk. [150]

In the District Court of the United States, in and for the Southern District of California, Southern Division.

No. 345—CIVIL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY,

Defendant.

Government's Request for Instructions.

I.

You are instructed to find for the plaintiff on each of the first six causes of the plaintiff's petition. **[151]**

II.

You are instructed to find for the plaintiff on each of the counts seven to twelve, inclusive, of the plaintiff's petition.

III.

You are instructed to find for the plaintiff on each of the counts thirteen to eighteen, inclusive, of the plaintiff's petition.

IV.

You are instructed to find for the plaintiff on each of the counts nineteen to twenty-four, inclusive of the plaintiff's petition.

5.

You are instructed to find for the plaintiff on each of the counts twenty-five to thirty, inclusive, of plaintiff's petition. **[152]**

6.

If you believe that the so-called releases at Colton, varying from one hour to one hour and thirty minutes were not in the nature of releases for a definite and fixed time, you are instructed that such releases did not break the continuity of the service of the employees involved. A release for an indefinite period, although it transpired that such period of inactivity amounted to as much as one hour and thirty minutes, did not break the continuity of service, within the meaning of the statute.

7.

If you believe that when the crews involved reached Colton they had not reached their terminal or the end of their run, and that they still remained the crews of their respective trains, and that the so-called releases at said point were not for a definite and fixed period, you are instructed that such releases did not effect a break in the continuity of their service.

8.

For a release to constitute a break in the service, it must be given before the period claimed begins, and must be for a definite time. [153]

9.

A release to break the continuity of service must be such that all the facts and surrounding circumstances will permit of the employees being absolutely free to come and go at will, and not so restricted that the complete enjoyment of such release may be hampered by the fear that such employee may be wanted by his employer at some particular place during each

time of release for duty in connection with his regular work. It is not sufficient that the carrier state to the employees that they are released and free to go wherever they choose, when the employee at the same time is given to understand that he shall keep himself in readiness to respond whenever called for or needed to resume regular duty.

10.

As to counts seven to twelve, inclusive, you are instructed that the heavy rains and unprecedented floods occurring on the dates shown did not excuse the carrier for keeping the employees involved on duty in excess of sixteen hours.

11.

You are instructed that for a casualty, unavoidable accident, or act of God to warrant service of employees engaged in or connected with the movement of trains in excess of sixteen hours, such cause of delay must have arisen subsequent to the time such employees left their initial terminal. [154]

12.

You are instructed that the bad condition of the defendant's railroad track, bridges and roadbed on February 27, 1914, due to the heavy rains and unprecedented floods arising on February 18, 19, 20, 21 and 22, does not justify the defendant in keeping on duty in excess of the sixteen-hour period a crew who left their initial terminal at Los Angeles on said day of February 27, 1914.

13.

You are instructed that if you find the defendant guilty on the counts involved, you have nothing what-

ever to do with the fixing of the amount of the penalty for the violation; that the matter of assessing the penalties is entirely for the consideration of the Court, and your duty only is to find whether or *nor* the employees made the basis of the various thirty counts of the plaintiff's petition, were or were not on duty in excess of sixteen hours.

ROSCOE F. WALTER,
Special Assistant to the United States Attorney.

[Endorsed]: No. 345—Civil. In the District Court of the United States, for the South. Dist. of California, Southern Division. United States of America, Plaintiff, vs. Southern Pacific Company, Defendant. Plaintiff's Request for Instructions. Filed October 27, 1915. Wm. M. Van Dyke, Clerk. By Floyd S. Sisk, Deputy. **[155]**

In the District Court of the United States, in and for the Southern District of California, Southern Division.

No. 345—CIVIL.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY,
Defendant.

Plaintiff's Motion for a New Trial.

Comes now the United States of America, by its attorney Albert Schoonover, United States Attorney for the Southern District of California, and moves

that the verdict of the jury herein be vacated, and that the judgment of the Court be set aside and a new trial granted, for the following reasons:

First. That said verdict of the jury is not sustained by sufficient evidence.

Second. There was no testimony to sustain said verdict.

Third. That said verdict of the jury is contrary to law.

Fourth. That said verdict of the jury is contrary to the law and facts.

Fifth. That the Court erred in refusing to give plaintiff's requested instructions No. 1, to wit:

> "You are requested to find for the plaintiff on each of the first six counts of the plaintiff's declaration."

Sixth. That the Court erred in refusing to give plaintiff's requested instruction No. 2, to wit: [156]

> "You are requested to find for the plaintiff on each of the counts seven to twelve, inclusive, of the plaintiff's declaration."

Seventh. That the Court erred in refusing to give plaintiff's requested instructions No. 3, to wit:

> "You are requested to find for the plaintiff on each of the counts thirteen to eighteen, inclusive, of the plaintiff's declaration."

Eighth. That the Court erred in refusing to give plaintiff's requested instructions No. 4, to wit:

> "You are requested to find for the plaintiff on each of the counts nineteen to twenty-four, inclusive, of the plaintiff's declaration."

Ninth. That the Court erred in refusing to give plaintiff's requested instructions No. 5, to wit:

> "You are requested to find for the plaintiff on each of the counts twenty-five to thirty, inclusive, of the plaintiff's declaration."

Tenth. That the Court erred in refusing to give plaintiff's requested instructions No. 6, to wit:

> "If you believe that the so-called releases at Colton, varying from one hour to one hour and thirty minutes were not in the nature of releases for a definite and fixed time, you are instructed that such releases did not break the continuity of the service of the employees involved. A release for an indefinite period, although it transpired that such period of inactivity amounted to as much as one hour and thirty minutes, did not break the continuity of service within the meaning of the statute." [157]

Eleventh. That the Court erred in refusing to give plaintiff's requested instructions No. 7, to wit:

> "If you believe that when the crews involved reached Colton they had not reached their terminal or the end of their run, and that they still remained the crews of their respective trains, and that the so-called releases at said point were not for a definite and fixed period, you are instructed that such releases did not effect a break in the continuity of their service."

Twelfth. That the Court erred in refusing to give plaintiff's requested instructions No. 8, to wit:

> "For a release to constitute a break in the ser-

vice, it must be given before the period claimed begins, and must be for a definite time."

Thirteenth. That the Court erred in refusing to give plaintiff's requested instructions No. 9, to wit:

"A release to break the continuity of service must be such that all the facts and surrounding circumstances will permit of the employees being absolutely free to come and go at will, and not so restricted that the complete enjoyment of such release may be hampered by the fear that such employee may be wanted by his employer at some particular place during such time of release for duty in connection with his regular work. It is not sufficient that the carrier state to the employees that they are released and free to go wherever they choose, when the employee at the same time is given to understand that he shall keep himself in readiness to respond whenever called for or needed to resume regular duty." [158]

Fourteenth. That the Court erred in refusing to give plaintiff's requested instructions No. 10, to wit:

"As to counts seven to twelve, inclusive, you are instructed that the heavy rains and unprecedented floods occurring on the dates shown did not excuse the carrier for keeping the employees involved on duty in excess of sixteen hours."

Fifteenth. That the Court erred in refusing to give plaintiff's requested instructions No. 11, to wit:

"You are instructed that for a casualty, unavoidable accident, or act of God to warrant service of employees engaged in or connected with

the movement of trains in excess of sixteen hours, such cause of delay must have arisen subsequent to the time such employees left their initial terminal."

Sixteenth. That the Court erred in refusing to give plaintiff's requested instructions No. 12, to wit:

"You are requested that the bad condition of the defendant's railroad track, bridges and roadbed on February 27, 1914, due to the heavy rains and unprecedented floods arising on February 18, 19, 20, 21 and 22, does not justify the defendant in keeping on duty in excess of the sixteen-hour period a crew who left their initial terminal at Los Angeles on said day of February 27, 1914."

Seventeenth. That the Court erred in permitting defendant to file its first amended answer.

Eighteenth. That the Court erred in not sustaining plaintiff's demurrer to paragraph four of defendant's first amended answer as to counts 7, 8, 9, 10, 11 and 12 of plaintiff's petition. [159]

Nineteenth. That the Court erred in permitting defendant to file its second amended answer.

Twentieth. That the Court erred in overruling plaintiff's demurrer to paragraphs two and three of the defendant's second amended answer to the seventh, eighth, ninth, tenth, eleventh and twelfth

counts of the plaintiff's petition.

ALBERT SCHOONOVER,
United States Attorney,
ROBERT O'CONNOR,
Assistant United States Attorney,
ROSCOE F. WALTER,
Special Assistant United States Attorney,
Attorneys for Plaintiff.

[Endorsed]: No. 345–Civil. In the District Court of the United States for the South. Dist. of California, Southern Division. United States of America, Plaintiff, vs. Southern Pacific Company, Defendant. Plaintiff's Motion for New Trial. Filed Nov. 1, 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. **[160]**

In the District Court of the United States in and for the Southern District of California, Southern Division.

No. 345—CIVIL.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

THE SOUTHERN PACIFIC COMPANY,
Defendants.

Bill of Exceptions.

The above-entitled cause came on regularly for trial on Thursday, October 21, 1915, before the Honorable OSCAR TRIPPET, Judge of the above-entitled Court, and a jury impaneled and sworn,

Roscoe Walter, Esquire, Special Assistant to the United States Attorney, appearing for the plaintiff, and W. I. Gilbert, Esquire, appearing for the defendant, and the following proceedings were had and testimony taken:

The following stipulation of facts was then read in evidence (omitting title of court and cause):

"Stipulation.

IT IS HEREBY STIPULATED AND AGREED between the parties in the above-entitled cause that the defendant is and was at the times involved in the Government's declaration a corporation organized and doing business under the laws of the State of Kentucky, and a common carrier engaged in interstate commerce by railroad in the State of California;

That the trains involved in the thirty counts of the Government's declaration were, on the dates alleged, engaged in the movement of interstate commerce. **[161]**

As to counts one to six, inclusive, it is stipulated that the employees, made the basis of said counts, and whose names are set forth therein, went on duty in the service of the defendant company at 5 A. M. on February 2, 1914, in charge of said defendant's train Extra 2784, and that said employees in charge of said train proceeded with said train from Los Angeles, California, to Indio, in said State, at which latter point said employees were by the defendant released at the hour of 9:50 P. M. of said date; that said employees at the station of Colton, California,

were by the defendant given what was at that time designated by the defendant a release of one hour and thirty minutes; that with the exception of said one hour and thirty minutes said employees were on duty continuously on said date from the hour of 5 A. M., to the hour of 9:50 P. M.

With respect to counts seven to twelve, inclusive, it is stipulated that the employees, made the basis of said counts, and named in said counts of the Government's declaration, were on the 27th day of February, 1914, by the defendant, placed in charge of defendant's train Extra 2765 running from Indio, in the State of California, to Los Angeles, in said State, and the said crew on said date, did operate defendant's train between said points; that the said crew reported for duty at Indio, California, at 3:10 A. M. on said date and were finally relieved from duty by the defendant at 8:40 P. M. on said date at Los Angeles, California. At the station of Colton, on said date, the said crew in charge of Extra 2765 were by the defendant given what was designated by said defendant at said time a release of one hour and thirty minutes; that **[162]** with the exception of the time of said designated release the said crew were continuously on duty from said hour of 3 A. M. on said date to the hour of 8:40 P. M. on said date.

As to counts thirteen to eighteen, inclusive, it is stipulated that the employees named therein, and made the basis of said counts, were by the defendant placed in charge of said defendant's freight train No. 242, engine No. 2549 on February 24, 1914; that

said train crew in charge of said train were connected with the movement of said train from Los Angeles, in the State of California, to Palm Springs, in said State; that said train crew reported for duty and began service at the hour of 1:30 A. M. on said date at Los Angeles, California, and were relieved from duty by the defendant at 6:30 P. M. on said date at Palm Springs, in the State of California; that said defendant on said date gave said crew at Colton, California, what was designated at said time by said defendant a release of one hour and twenty minutes; that with the exception of the time of said designated release said employees of said defendant in charge of said train were on continuous duty from the hour of 1:30 A. M. on said date to the hour of 6:30 P. M. on said date.

As to counts nineteen to twenty-four, inclusive, it is stipulated that the employees named therein, and made the basis of said counts, were by the defendant on the 8th day of March, 1914, placed in charge of defendant's freight train 1/242, engine 2617, and said employees while in charge of said train conducted said train from the station at Los Angeles, California, to the station of Indio, in said State; that said employees went on duty on said date **[163]** in charge of said train at the hour of 1:35 A. M. at Los Angeles, California, and were by the defendant relieved at Indio, in said State, at the hour of 7 P. M. on said date; that said crew at the station of Colton, California, were by the defendant given what was at that time designated by the defendant a release of one hour and twenty minutes; that with the excep-

tion of said release of one hour and twenty minutes the said crew in charge of said train on March 8, 1914, were in continuous service from the hour of 1:55 A. M. to the hour of 7 P. M. on said date; that with the exception of said period of release at Colton, California, on said date said crew were in continuous service in charge of said train from the hour of 1:55 A. M. to the hour of 7 P. M. on said date.

With respect to counts twenty-five to thirty, inclusive, it is stipulated that the employees named in said counts, and made the basis of said counts, were by the defendant placed in charge of defendant's freight train 516, engine 2711 on the 12th day of March, 1914, and that said employees on said date, and the following day of March 13, 1914, conducted said train from the station of Los Angeles, California, to the station of Indio, in said State; that at the hour of 4:20 P. M. on the 13th day of March aforesaid, when said crew were at Colton, in the State of California, they were by the defendant given what was designated by said defendant on said date a release of one hour; that with the exception of said period of release said employees were in continuous service on said date from the hour of 7:30 P. M. on March 12, 1914, to the hour of 12:25 P. M. on March 13, 1914. **[164]**

IT IS FURTHER STIPULATED that the parties to the above-entitled cause reserve the right to introduce any further testimony relative to what occurred on said dates at Colton, California, with respect to all the facts and circumstances surround-

ing the aforesaid designated releases of said crews on said dates.

IT IS FURTHER STIPULATED between the parties hereto and to be considered as applying to each and every count in plaintiff's petition, that during the aforesaid periods of release at Colton, said train crews were not in any way called upon, and did not perform any duties in connection with their service in the movement of their said train.

ALBERT SCHOONOVER,
United States Attorney,
By ROBERT O'CONNOR,
Assistant United States Attorney,
ROSCOE F. WALTER,
Special Assistant to U. S. Attorney,
Attorneys for Plaintiff.
HENRY T. GAGE and
W. I. GILBERT,
Attorneys for Defendant."

Testimony of R. N. Richardson, for Plaintiff.

R. N. RICHARDSON, witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

My name is R. N. Richardson. I am a locomotive engineer for the Southern Pacific Company. I was such locomotive engineer for that company on February 2, 1914. I do not remember my run on that date. I would have to look up my reports. We make out a report we turn in to the Company. It is a duplicate report, a carbon of the report, that is, a duplicate carbon. It is a trip report. On this report it states the engine number, train number we

(Testimony of R. N. Richardson.)

are called to leave on and the class of train and from what station and to what station, the time we are called to leave and the [165] time we leave and the time we arrive at our terminal and the time we are relieved at our terminal. It also shows the number of hours we work. Also the number of miles and the hours, over miles, etc. We are paid on the mileage basis and for overtime after the schedule running of the train. We are paid by the hour in some cases. We have an eight-hour day and we are paid for eight hours. Above eight hours we are paid overtime in some cases, but we are paid for a full day if we only work one hour and if we work more than eight hours we are paid overtime at the rate of twelve and a half miles per hour. If we were on duty as much as sixteen hours our pay for that day would be two hundred miles, or two days pay. That would be eight hours above the regular time, eight hours overtime at the rate of twelve and a half miles an hour. Our pay for the time above the ordinary day on a run like that if we work sixteen hours would be at the same rate as the first hundred miles. If we were on duty seventeen hours our pay would be the same rate as the first hundred miles. We would be paid extra for that at the rate of twelve and a half miles an hour. I do not remember anything about what occurred on the 2d day of February, 1914, without my trip report. I have that report at home. I did not bring it with me.

Mr. GILBERT.—We have here the same record

(Testimony of R. N. Richardson.)

which he has, which I will be glad to deliver to the Government.

By the COURT (to the Witness).—Is that the report you make of that train?

WITNESS.—That is a duplicate, so far as I can tell. It says here: "Called to leave at 5:30 A. M." I was probably on the train at 5 o'clock. It might have been 5:05 or it might have been 4:50. We are supposed to be on the train **[166]** thirty minutes before leaving so the carmen can try the air and inspect the train.

The COURT.—Is that the requirement of the company?

WITNESS.—Yes, sir, it is the requirement of the company to be on the train thirty minutes prior to leaving. At that time I reported in accordance with the instructions of the railroad company. I cannot say positively at what time I reported for duty on February 2, 1914. I could not say whether I reported at 5 o'clock A. M. This report says we left at 5:40. It might have been that we got on the train at 5:30. I was called to leave at 5:30. If called to leave at 5:30 in the morning, I would have to report in time to bring the engine from the roundhouse over to River Station. That takes from ten to fifteen minutes and the company requires us to be on the train thirty minutes prior to the time we are to leave. The rules of the company required us to leave at 5:30 that morning and so they required us to report for duty at 5:00 o'clock that morning. As near as I can remember we started according to

(Testimony of R. N. Richardson.)

the rules of the company on that morning. Some times we are delayed a little bit, probably at the roundhouse or probably a train was ahead of us so we cannot get out. I reported for duty at 5 o'clock that day and the report here says that we are called to leave on an extra freight train. We were called to leave Los Angeles, or rather River Station, at 5:30 A. M. on February 2, 1914, on engine 2784; called for extra east freight train, freight extra, and the report says we left at 5:40 A. M., ten minutes initial delay. The report also shows that we made a total of two hundred and nine miles, one hundred twenty-nine road miles or time card miles and seventy-eight over miles. The report shows we [167] were called to leave at 5:30 A. M. and arrived at Indio at 9:50 P. M.; on the time slips it shows the total number of hours on duty were sixteen hours and ten minutes, and that did not include the preparatory time of thirty minutes. That does not include the time between 5 o'clock and 5:30 A. M. we were in readiness and between 5 o'clock and 5:30 A. M. ready to start out on that trip with our engine. My fireman that day was Howard G. Durrance. He reported for duty that morning the same time that I did, at 5 o'clock. He was my fireman the entire day. I sent in a time slip for him and he was with me as fireman the entire day, the entire time I was engineer that day.

Mr. WALTER.—We offer that in evidence as U. S. Exhibit 1.

(Which said U. S. Exhibit 1 has been transported

(Testimony of R. N. Richardson.)

to this Court for inspection by this Court in accordance with Subdivision 4, Rule 14 of this Court.)

Q. (By Mr. WALTER.) Mr. Richardson, I have here U. S. Exhibit 2. Will you examine that? (Handing document to witness.)

Q. What is it, Mr. Richardson?

A. Why, this is a daily report of our train. I did not sign that daily report. It is my signature, but I don't know who signed it. I did not make that report. I do not know who made it.

Cross-examination.

By Mr. GILBERT.—It is one hundred twenty-nine miles from Los Angeles to Indio. We have a stopping place between here and Indio, called Colton. Colton is a yard where trains are made up. [168] There is an icing station there. I have no recollection of our time at Colton, how much time we spent at Colton on this trip. The only way I would have of refreshing my memory would be to get my report, my trip report, the duplicate which I have. I usually keep them at home. I think I can find that particular report. I have no recollection of how long we stayed at Colton that day. I know we were relieved from duty there for some time. We must have been relieved in order to have been on duty not more than sixteen hours and ten minutes, as the report says. As far as the running time is concerned, I know we were released at Colton for some period. Colton is a stopping place for freight trains. They make up trains. Sometimes we take a train in there and take an entire new

(Testimony of R. N. Richardson.)

train out of there. We are released sometimes two hours and a half, sometimes four hours. The trains are switched there and made up and then we go from there to Indio. When we reach this station, Colton, if there is work to be done by our train at Colton it is done by the yard crew of which I was not a member. From the time we reach the station at Colton and turn the train over to the yard crew we had no duties to perform in relation to it.

Q. (By Mr. GILBERT.) You are masters of your own time there?

A. We are released and do not even have charge of an engine. We do not have charge of our engine. We are at liberty, if we see fit, to go and play a game of ball and we are to return to our duties at a time approximately to be given us by the yard master. During this interim we are absolutely released from duty so far as the train is concerned. I have stated that I have a record in my possession which will show the length of time we were released from duty at Colton on this eight hours trip if I [169] can find that record. I usually keep them at home. That report is also reflected in the dispatcher's report showing time in and out of our train. The chief dispatcher has a duplicate of our record showing the time the train reaches and pulls out of Colton and during the time we were in Colton we were absolutely released from work.

Mr. GILBERT.—We have, if your Honor please, the train sheets which this witness says reflects the

(Testimony of R. N. Richardson.)

number of this train, which we desire to offer in evidence.

Mr. WALTER.—I would like to ask a question.

Q. (By Mr. WALTER.) You say the dispatcher has a duplicate of this report there?

A. We call it a train sheet. I believe the company keeps a copy of all of these train sheets. I could not swear that the dispatcher has a duplicate report that is exactly correct as to that particular day, February 2, until I saw the report.

Q. (By Mr. GILBERT.) In order that there may be no mistake, I will ask you this: You have no way of knowing how many hours you were actually in service during that day unless you knew how many hours?

A. No, sir, I don't know now and don't undertake to testify how many hours I was on duty that day except as shown by my testimony which I have given. I was just called out to do that work and went out and did so and came back home. My hours on that date should be exactly the same as those of the conductor. That was the regular condition of affairs at that time, that a conductor and engineer's time of service each day correspond. That was true in regard to the time affected by a release at Colton, up to the time we were relieved at our terminal. Sometimes **[170]** we are from five to fifteen minutes waiting at the roundhouse after the conductor registers in. In that case a conductor would be released before the engineer. When the conductor gets a train into the yard he is through with the

(Testimony of R. N. Richardson.)

train while the engineer has to deliver the train to the roundhouse which required from five to fifteen minutes usually.

Testimony of U. G. Gibson, for Plaintiff.

U. G. GIBSON, a witness called on behalf of the Government, being duly sworn, testified as follows:

My name is U. G. Gibson. I am conductor on the Southern Pacific. I have been conductor on the Southern Pacific since January of 1907. I was a conductor on the Southern Pacific on February 2, 1914. I do not remember our run on that day. This paper, United States Exhibit 3, is my trip report, in other words, time slip. That was made out and signed by me. It was made February 2, 1914, and shows that my engineer on that day was Mr. Richardson. It does not show who my fireman was. It shows my brakemen were L. A. Kincaid, Carl S. Courtney and E. Elmer Waterman. I reported for duty on that day at 5 o'clock A. M. I was finally released from duty on that day at 9:50 P. M. These brakemen were with me on that trip. My run that day was a freight train between River Station and Indio. River Station is in Los Angeles.

Mr. WALTER.—I offer in evidence U. S. Exhibit 3.

(Which said U. S. Exhibit 3 has been transported to this Court for inspection by this Court in accordance with Subdivision 4, Rule 14 of this Court.)

Q. (By Mr. WALTER.) I hand you U. S. Exhibit 2. Examine that and state what that paper is.

A. That is my train delay report for extra east

(Testimony of U. G. Gibson.)

engine [171] 2784 on February 2, 1914. It shows that the time I reported for duty that day was 5 o'clock A. M. It does not show what time I arrived at Colton that day. That report was made by me. That is my signature.

Mr. WALTER.—I offer in evidence U. S. Exhibit 2.

(Which said U. S. Exhibit 2 has been transported to this Court for inspection by this Court in accordance with Subdivision 4, Rule 14 of this court.

Q. (By Mr. WALTER.) Mr. Gibson, I show you this book. (Handing book to witness.) What is that book, Mr. Gibson?

A. It is a Southern Pacific train book which I used on the day in question, February 2.

Mr. GILBERT.—If the Court please, I might state that the defendant admits that the trains involved in this law suit were engaged in interstate commerce on the date in evidence.

Q. (By Mr. WALTER.) Mr. Gibson, I hand you this paper. State what that paper is.

A. My trip report or time slip of February 27, 1914; I was a conductor in charge of extra 2765 on February 27, 1914. The run of that train on that day was Indio to Colton as as extra 2765, from Colton to Los Angeles as first, 243. My crew was Wiley M. Kincaid, John E. Pettijohn, and Thomas F. McBurney. The engineer was Wine, but I have no recollection of the fireman. The run of me and my crew on that day was from Indio to Colton as one train and from Colton to Los Angeles as another, but

(Testimony of U. G. Gibson.)

virtually the same train. [172]We had the same engine and the same engine crew from Colton to Los Angeles as we had from Indio to Colton, but there were two different train numbers. They ran us out of Indio as an extra and from Colton to Los Angeles as the first section of a regular train. The only difference was that our train had a different number from Colton to Los Angeles from what it had from Indio to Colton. We had the same employees, the same engineer, and fireman. I reported for duty on February 27, 1914, at 3:10 A. M., and arrived at Los Angeles and tied up at 8:40 P. M. This crew accompanied me all the way through from Indio to Los Angeles.

Mr. WALTER.—We offer in evidence U. S. Exhibit 4.

(Which said U. S. Exhibit 4 has been transported to this Court for inspection by this Court in accordance with Subdivision 4, Rule 14 of this court.)

WITNESS.—(Continuing.) This paper marked U. S. Exhibit 5 is my train delay report for February 27, 1914, extra 2765 of Indio. That delay report covers the movements of the train on which this crew ran all the way through from Indio to Los Angeles. I don't know what time we arrived at Colton. The delay report does not show anything in regard to what was done at Colton that day. It does show a release at Colton from 9:50 to 12 o'clock, and it also shows to meet number 32 forty minutes of Colton. That is it shows a release from 9:50 to 12 noon and it also shows forty minutes to meet number 32. I

(Testimony of U. G. Gibson.)

understand by that that we were released at 9:50 and that would be about the time the engine would be cut off from the train and left at the engine-house, when the engine crew would get off of the engine until 12 o'clock, and the forty minutes to meet number 32, as near as I can remember from this, is included in the two hours and [173] ten minutes, this is from 9:50 to 12 o'clock noon. I am not certain what time No. 32 arrived at Colton, but it arrived between 11:20 and 11:40, as near as I can remember. As near as I can remember the hour of wait for this 32, or the 40 minutes, arose between 11, or 11:15, and 11:45. The 40 minutes wait for 32 did not begin at 9:50, it began about 11:20. I subtract from 9:50 to 12 o'clock noon the 40 minutes that we waited for 32 and according to that we were released at Colton for a period of time which would be the difference between 2 hours and 10 minutes and 40 minutes. From 9:50 to 12 noon is 2 hours and 10 minutes, and we were released at Colton the difference between 2 hours and 10 minutes and 40 minutes. All of that time from 9:50 to 12, we were not on duty. We got off duty at 9:50 and went back on duty at 12 o'clock noon. During that time we were not on duty at all. We were entirely released. I see through this now, there is two hours and ten minutes that we were released from duty there at Colton, and then there is 40 additional that we had to wait for train No. 32 after we got ready to pull out. That is, we were there at Colton 40 minutes after we were on duty. The yardmaster at Colton gave us our release.

(Testimony of U. G. Gibson.)

Either the yardmaster or the operator on duty. When the yardmaster gave us our release he usually says: "You are released for two hours," or more, whichever it might be, whichever was the case. That is the form that he gave it to us. The usual statement we get there at Colton is: "You are released for two hours," or "three hours," or whatever the case might be. It is a verbal release. I do not remember the form of the expression used on this particular day. It is very seldom the practice to give a release for any indefinite period, although [174] they would do so at times and in case of an indefinte release the form of release would be, "You are released for a call." I do not think this was the form of release on this particular day, but I am not certain. I was the conductor. If it was stated that I was released from 9:50 to 12 on that date that meant that I was off duty entirely, that I could do as I liked during that period. I could go to the caboose, go over town, and go to bed if I liked. It does not mean that my train would be ready to leave at 12 o'clock, but would be ready for me to check up at 12 o'clock, then I would begin checking at 12 o'clock. My duties in that regard were checking up the way-bills and the cars that were added to the train and taken off of the train that I brought in and added to the train I had taken out of there. I checked up the way-bills, the number of the car, the initial, and the final destination of the car. That would necessitate my going along down the train after I check up the bills, so that at that time it would depend upon the number of cars picked

(Testimony of U. G. Gibson.)

up and sent out as to how long it would take us to check up a train and our way-bills and get ready to start out. Ordinarily, I should judge, it would take about ten or fifteen minutes to do that, sometimes more, sometimes less. I don't think we had any duty that day with regard to checking the cars and way-bills, etc., and if there was any work of that kind done I must have done it and it must have been done after 12 o'clock. Sometimes, as I call it, I double up on the delays, the number of minutes, and make the delay read 40 minutes waiting for number 30, or some numbered train, and during that time I check up my way-bills and train while I am waiting. And on this particular day, if it had happened that this train was late we would not have left [175] Colton on schedule, and, of course, we would have been required to check up our train. As near as I can remember on this particular day, after I got my release I went over on Front Street and got lunch, after which I came back to the yard and went to the caboose. I don't know how long I was. Ordinarily it would take me about 20, 25 or 30 minutes to go over there and get my lunch. When I got back to the caboose I must have laid down. I had nothing to do at the time. I had my reports all finished up to the time I arrived at Colton and after I went back to the caboose I had nothing to do that I remember of. I remember on this particular day that I had all my reports checked up to the time of my arrival at Colton. I always have it that way. When I was given a release from 9:50 to 12, I had a right to go any where

(Testimony of U. G. Gibson.)

that I wanted to in that time within limits. That is within reasonable limits; what I mean by that is, not to go too far away from the yard, but where they could find me in case of necessity. It isn't the practice of the men to leave their work and go off to some other town or anything of that kind or to go to a show or anything of that kind. At least I have never went to a show or went to another town or anything of that kind when I was released there because I didn't think it was my duty to do anything of that kind. My instructions were that I was released for a certain period of time and that I had absolutely nothing to do during that time. I had no instructions in regard to the distance away from the station I might go. I had no instructions to remain within calling distance in case of necessity, but when I stated a while ago that I would be within a certain distance in case of necessity, I meant in case of emergency, such as wrecks, washouts, or anything of that kind. We were [176] at all times supposed to be within calling distance and for that reason during these releases I would stay within calling limits, which, I believe, is one mile. The requirement of the railroad is that we live within one mile of the railroad depot or station where we can be called on or if we live further away have a phone so that we can be called by phone. I didn't live at Colton. On that day I was conductor in charge of extra 2784, Los Angeles to Indio. My train was moving under orders from the dispatcher, with the superintendent's signature attached. We get one set of orders here at River

(Testimony of U. G. Gibson.)

Station yard, that is, the Los Angeles yard, before leaving, perhaps get another at Shorb, another set at Colton, and still another set at Beaumont. We had orders on that day to take this train from Los Angeles to Indio, but whether it was one, two or three sets of orders I couldn't say, but those were our orders, to conduct that train from Los Angeles to Indio and we did that. As far as I remember, the orders that I had either from River Station or Shorb were fulfilled when I arrived at Colton; at times we [illegible]ming orders either at River Station, that is the Los Angeles yard, or Shorb, to run extra, or run a special train or a section of a train, River Station or Shorb to Colton. Leaving Colton, we would probably get another order to run the same train from Colton to Beaumont, and the same out of Beaumont to Indio. On that day we had instructions when we left Los Angeles to take this train to Indio and I don't remember that on that day we received instructions to do anything else with reference to this train, but take it to Indio. In other words, our duty was not fulfilled until we arrived at Indio. I stated that on February 27, I was conductor on extra 2765, from Indio to Los Angeles, when I was called on [177] February 2, for extra 2784, Los Angeles to Indio. I was notified of what my run would be on that day in the form of train orders. I was given a train order when I asked for orders at River Station, that is the Los Angeles yard. I was here given a clearance card or train order stating that I was to run extra or as a certain numbered train from River Station to Col-

ton. The call-book I signed at Los Angeles called for a certain train to leave at a certain time to go east, no certain train to leave at a certain time Lie,I book I have no instructions as to the destination of that train until I get my train orders. I did not know on that day where I was to take the train until after I had received my train orders and on February 27, 1914, with respect to 2765, I did not know until I signed the call register where I would take that train.

Mr. WALTER.—I offer in evidence U. S. Exhibit 5.

(Which said U. S. Exhibit 5 has been transported to this Court for inspection by this Court in accordance with subdivision 4, Rule 14, of this court.)

This paper, U. S. Exhibit 6, for identification, looks to me like a copy of my delay report. My signature is to it. It is my delay report sent from Indio to Los Angeles by the operator at Indio. I don't know whether I was conductor on train 242, engine 2549, Los Angeles to Palm Springs, on February 24, 1914, nor on March 8. This paper, U. S. Exhibit 7 for identification is my trip or time report for March 8, 1914. On that day I acted as conductor on train first, 242, from Los Angeles to Indio. I do not re-remember what our crew did on that day at Colton, but if we were released for an hour or an hour and a half or two hours, we certainly didn't do a thing in regard to the work for the [178] time that we were released for. The facts with regards to this train are the same as with regard to the first train to

(Testimony of U. G. Gibson.)

which I testified. All of the time I was under the employment of the defendant I was under instructions in regard to where I should live, that is, within a mile of the depot or to have a telephone if I lived further. During the hour and thirty minutes that I was released at Colton, I had the privilege of going over town or going to the caboose and lying down and going to sleep if I so desired. I was not under an order to conduct the movement of that train to its destination at Indio. I did not have any written orders concerning what I should do at Colton during the hour and thirty minutes. Leaving River Station or Shorb, I received written orders and did not receive any other orders when I got to Colton except a verbal order that I was released for a certain period of time. The yardmaster or operator on duty at the time gave me that order, and, as near as I can remember, all he said was, "You are released for one hour," or "two hours" as the case might be. That was the practice to do that. With respect to February 27, 1914, extra 2765, Indio to Los Angeles, I moved that train from Los Angeles to Indio under an order from the dispatcher's office on that day. That order was not annulled at Colton, but was fulfilled. When we left Shorb or River Station we got running orders to Colton, either Colton of Beaumont. During a certain period of the year, I believe the dispatcher's district extends from Los Angeles to Beaumont and Beaumont to Indio. The other periods of the year it extends from Los Angeles to Colton, Colton to Beaumont, and Beaumont to Indio. When I receive

(Testimony of U. G. Gibson.)

orders at River Station or Shorb it extends, as the case might be at different periods of the year, to Colton, or Beaumont. On all these three dates, the first thing I did when I reported for duty was to get a check of my train that I was to take out and then get [179] a check of the way-bills accompanying the cars. I signed the register or call-book at the time I reported for duty. This book, as near as I can remember, is a book with duplicate pages signed by the man called showing the time called and the time the train was due to leave. There are no oral instructions given at the time we are called as to where we shall go, except perhaps if I am called for an extra the call-boy says "Extra east at"—a certain time. With regard to February 22, I was called for extra 2784 and when he called me the boy said "Extra east at"—such a time. I don't remember the time called for. It meant that I was to leave Los Angeles on this extra at the time specified in the call to go east, not to any particular point or destination from the call-boy. I proceeded to duty in response to that call. That instruction was not revoked, and in response to that call, on that date, as near as I can remember, I went to Indio with running orders to Colton. With respect to February 27, 1914, as to extra 2765, when the boy called me he said, "West at"—such a time, and gave the time we were to leave there. I signed the call-book as to that and in response to that call, as near as I can remember, I got a check on the train and the way-bills accompanying the cars and did as instructed in train orders which

(Testimony of U. G. Gibson.)

I received later. In response to that call on that day I undoubtedly went from Indio to Los Angeles. With regard to March 8, 1914, first 242, engine 2617, I was called by the call-boy on that morning. The instructions I received over the phone in my home here in Los Angeles were "First 242 at 2:25." First 242 is a freight train and I left here 20 minutes late on a call. The run of 242 at that time was from Los Angeles to Indio. That instruction was not revoked before I got to Indio on [180] that day. Without a doubt, I got another set of orders at Colton, and still another at Beaumont but these orders did not revoke the orders given by the call-boy.

Testimony of R. N. Richardson for Plaintiff (Recalled).

R. N. RICHARDSON, witness recalled on behalf of plaintiff, testified as follows.

I testified this morning that I was an engineer on 2784, Los Angeles to Indio, on February 2, 1914. On that day I was called by telephone to be engineer on this train. I presume it was the roundhouse foreman who called me. The caller said, "We want you for extra east to leave River Station at 5:30 A. M." Sometimes they tell the engine and sometimes not, but just simply state that "We want you for an extra east" at a certain time. "Extra east" means that the train is not a regular train. It does not mean as to any particular point where the train is going. Sometimes they run as far as Colton and then come back from Colton. These instructions given me over

(Testimony of R. N. Richardson.)

the telephone that day were not revoked and in response to said instructions I took the train as engineer on that day to Indio. This order that I get is simply to take a train east.

Testimony of Ben M. Lindley, for Plaintiff.

BEN M. LINDLEY, witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

My name is Ben M. Lindley. I am a freight conductor, an extra man as conductor, a brakeman as regular man, for the Southern Pacific. I have been running extra for about four years. This document, U. S. Exhibit No. 8, is commonly known as train delay report. I made that report, and that is my signature. On February 24, I was conductor on train 242, engine 2549, Los Angeles to Palm Springs. On that day [181] I was called out at River Station I was called for 2 A. M. I was at home when I was first notified. The company uses a caller and also telephones. I have a phone that I am called over. They usually give me an hour and a half time from the time I am called to the time set for the train to depart. When they call me by phone they call me for extra so and so. He would say, "We want you to take out 242 at 2 A. M." 242 is a freight train, commonly known as a through train, from Los Angeles to Indio, — is our sub-division. On that day we didn't go to Indio but went to Palm Springs. On our arrival at Colton we go in and register in the train register and also turn the way-bills of the cars

(Testimony of Ben M. Lindley.)

in the train over to the trainmaster, and he personally notified me that I would be released until called. When I arrived at Colton,— there is always more or less delay there, that is the eating station — and on arrival there I, as well as most of the men, go in and say, "Well, what is the dope? How long do you think we will be here?" That, so that we will know how much time we will have to eat. If he sees there is quite a bit of delay, he says, "You are released until called to finish the trip." I was released there this day for an hour and thirty minutes. When I was recalled, I was called to finish the trip to Indio, eastbound. The number of the train first 242 extends as far as Yuma over our two divisions. There are two freight divisions. There are two crews work between Los Angeles and Yuma. That is train 242 is carded on our time card from Los Angeles to Yuma but when they call us to go they call up simply designating the number of the train that is called for leaving Los Angeles. But that doesn't mean that it will always go through on that one number all the way [182] through or that we will go all the way through. On its run to Yuma the train can't go any other way except through Indio and we went as far as Palm Springs.

Q. You had no orders revoking your instructions that you received from the call boy on that morning? Answer that question. Did you or not have any orders revoking the instructions received from the call boy on that morning?

A. I was released at Colton, which is the usual

(Testimony of Ben M. Lindley.)

thing, and a number of times when we are called for any certain train number as 242 out of Los Angeles, that number changes and possibly at Colton we would get orders to run out of there as an extra. I was relieved at Colton until further orders.

Cross-examination.

I was relieved once at Palm Springs. Palm Springs is on the main line of the Southern Pacific between Colton and Indio. I was relieved there on account of the service law, that is the 16-hour law. I had orders to go to Palm Springs and we were going over the 16-hour law, and I was relieved by wire. I had notice at Cabazon to get in the clear previous to my 16-hour limit, and be relieved at Palm Springs, which is an unusual point.

Mr. WALTER.—We offer this in evidence.

(Which said U. S. Exhibit 8 has been transported to this Court for inspection by this Court in accordance with Sub-division 4, Rule 14 of this court.)

[183]

Testimony of Charles O. Wine, for Plaintiff.

CHARLES O. WINE, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

My name is Charles O. Wine. I am a locomotive engineer for the Southern Pacific. I was in the employ of that company on February 27, 1914. I think I had extra 2745 on that day. My conductor was U. G. Gibson. The run of the train on that day was Indio to River Station, Los Angeles. River Station is in the Southern Pacific freight yards here in Los

(Testimony of Charles O. Wine.)

Angeles. I was notified on the morning of February 27, when I was called in Indio for an extra west for the first 243, or whatever it was. I think we came part way as an extra and came out of Colton as first 243. From Colton it went to River Station. I was simply called for a west-bound train. The usual run is from Indio to Los Angeles, or River Station, unless there is some reason that they turn back at Colton. I did not receive any instructions at Colton revoking my former instructions as to where I should go on that day.

Cross-examination.

I must have been released on that day on account of the 16-hour limit. According to my time slip I see I was released from the roundhouse on account of the 16-hour law, to avoid being on duty more than 16 hours. I was released at the shops. I came in by the roundhouse. [184]

Testimony of Charles H. Winters, for Plaintiff.

CHARLES H. WINTERS, a witness called on behalf of plaintiff, being first duly sworn, testified as follows:

I am an engineer for the Southern Pacific. I was such engineer on February 24, 1915. The U. S. Exhibit 9 is a report of trip I made from Los Angeles to Indio, on second 242, from Los Angeles to Palm Springs, on that day, engine No. 2617.

Q. Now, it is stipulated that you were on train No. 242, engine 2549, on February 24, 1915, Los Angeles to Palm Springs. In what way were you noti-

fied, on that day, that you were required to take this train from Los Angeles to Palm Springs.

A. I am always called by telephone. They ring me up 2 hours before leaving time and they tell me the engine number and generally the fireman I get and generally tell me either 242 or extra east. The run of 242 was to Yuma. On its way to Yuma the train goes through Palm Springs. I don't know whether I was called for 242 on that day or just for a train at that time. I was probably called to take 242 out. I was relieved for an hour and 30 minutes at Colton but I don't remember the terms of that release. It meant that we were to be released, the watchman would take charge of the engine and we were to get off and stay away from the engine until the time was up, unless they called me. It released me from continuing the journey on 242 unless they notified me to come on. I was done then for the day's work unless they called me again. I only had instructions to go as far as Colton; with regard to rules at Colton, I had the privilege of doing anything I wanted to. As a general thing we went down and took a nap. I do not think there is any specified distance in Colton [185] within which we have to remain. We had to be back within the expiration of an hour and thirty minutes if we were called. The release for an hour and thirty minutes meant that we were finally released. They were supposed to notify me when they wanted me again. I understood that release to mean that it released us from all responsibility from the engine or anything until they

(Testimony of Charles H. Winters.)

wanted us again. We had a right to do anything we wanted to, go to bed, sit around and talk, there was nothing to do. There is a watchman stays on the engine that has charge of it in the roundhouse. We were free to do anything we saw fit to do. We could go to sleep if we wanted to. There is a bunk-house there. The bunk-house is right near to the roundhouse. There is a car there with cushions, it has a bench with cushions on it and another bench with cushions to put your feet on, and steam heat and electric lights. If I had been released for two hours instead of one hour and thirty minutes I would not understand that there would be any difference only that we could go up town and stay longer. It meant in case of an hour and thirty minutes that I should be at the roundhouse at the expiration of the hour and thirty minutes so that I could register out and when I was released I could go anywhere I wished provided I returned at the expiration of the hour and thirty minutes and I was to be back at the expiration of one hour and thirty minutes in case I was notified to go out. They have a caller there to send out and get you. They would find us any place around there, in the bunk-house asleep or up town talking. When I was released for an hour and thirty minutes we could be any place we wanted to. We had to be accessible at the expiration of the hour and thirty [186] minutes but we had a right to be any place so far as I could see. If we were going to be any distance away we would generally notify the caller. We had a right to go five or six miles away.

(Testimony of Charles H. Winters.)

When we were wanted the caller came for us. It was our duty to be in the roundhouse at the end of an hour and thirty minutes.

Mr. WALTER.—We offer in evidence U. S. Exhibit 9; also U. S. Exhibits 6 and 7.

(Which said U. S. Exhibits 9, 6 and 7 have been transported to this Court for inspection by this Court in accordance with Subdivision 4, Rule 14 of this court.)

Under that release of one hour and thirty minutes at Colton, I had the same right as I would have when I got to the end of the division to go on home. When I am released my time stops and I am released of all charge of the engine or train at all until I am called again. If I was released for an hour and thirty minutes, that is if it said released for an hour and thirty minutes, we would be expected to be back at the roundhouse at that time. I believe I was paid for that time, that hour and thirty minutes.

On March 8, 1914, I was engineer on first 242, engine 2617, Los Angeles to Indio. I went on duty at 1:55 A. M. at Los Angeles and was released at Indio at 7 P. M. I was at home when I was first notified that I would be required to be engineer on that train that day. The caller rang me up over the telephone and either called me for extra east or for 242. The run of 242 is Los Angeles to Yuma, by way of Indio. [187]

Cross-examination.

I don't remember that I was released for any particular time, such as one hour and thirty minutes at

(Testimony of W. H. Whalen.)

Indio. On one of the trains mentioned by counsel for the government I was released at Palm Springs because of the 16-hour law, in order not to work over 16 hours.

Redirect Examination.

I say I don't know whether I was released for a definite period or not. If I was, I would be back at the roundhouse, but I don't remember the exact time. I wouldn't be positive whether I was released for a definite period on February 24, 1915, with respect to train 242, engine 2549, unless I could see some reports. It might have been a release until I was called, or a release for a definite time.

Testimony of W. H. Whalen, for Plaintiff.

W. H. WHALEN, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

My name is W. H. Whalen. I am superintendent of the Los Angeles Division of the Southern Pacific. I was such superintendent February 2, 1914. I was in charge of the employees who were in charge of extra 2784, Los Angeles to Indio, on February 2, 1914. These employees were released for a period of one hour and thirty minutes at Colton on that day. The purpose of that release was to give them a rest. We did not need them there while we were doing the work. If we had not released them the hours of service would have continued. If they had not been released under the form that they were released, they probably would not [188] have reached their destination within the sixteen hours. When the release

(Testimony of W. H. Whalen.)

was given it was not given with the anticipation, necessarily, that the crew might not reach their destination within sixteen hours. We did not need them and so we gave them their freedom. That is true with regard to all these crews on these trains. All of these employees were paid for the time that they were released at Colton. With regard to the train crew in charge of extra 2784, this crew was on duty from 5 A. M. on February 2, 1914, to the hour of 9:50 P. M. on said date, and these men were paid for the entire time they were on service, including the time released. They were paid for the entire time from 5 A. M. to 9:50 P. M. With regard to extra 2765, Indio to Los Angeles, this crew went on duty at Indio at 7:10 A. M. and were released at 8:40 P. M. and these men were paid for that entire time. With regard to train 242, engine 2549, February 24, 1915, this crew went on duty at 1:30 A. M. and were released at Palm Springs at 6:30 P. M. and these men were paid for the entire time. With regard to first 242, engine 2617, on March 8, 1914, these employees went on duty at 1:55 A. M. and were released at 7:00 P. M. These employees were paid for that entire time. With regard to train 516, engine 2711, on March 13, 1914, this crew went on duty at Los Angeles at 7:30 P. M. and were released from duty at Indio the next day at 12:25 P. M. These employees were paid for that entire time. Train 816 on March 12, 1914, ran from Los Angeles to Indio. The employees on this train were notified of the fact that they would be required to handle this train from Los

(Testimony of W. H. Whalen.)

Angeles to Indio in this way: After a train dispatcher decides to run a train he will put a notice in over at the yard office and at the [189] motive power department and the call-boy will call men for Extra East, or often the train dispatcher indicates it to be 242 or 244. In this case it was 516. The run of 516 terminated at Calexico, down on the Southern Pacific south of Imperial Junction. That train went through Indio. The duty of these employees on receiving this notification that they would be required to go out on this train, No. 516, was to prepare to respond to the call, get their meals, if they desired to, and be on hand at their leaving time, ready to go. Then they were to take their respective positions on the train, the engineer, for instance would take his place on the seat in his engine and watch for the signal and when he got the signal would take hold of the throttle and start up the train. The fireman would be on the other side. They would run that train wherever the order designates. There is only one direction in which that train would run. It would naturally follow that they would take it where they were called to take it and where the order specified they would take it. Train 516 had only one place to go. They were to take it in that direction. That crew on that day proceeded to Indio and were released at Colton for an hour and thirty minutes. That meant that they were absolutely released from responsibility. I did not hear any of them testify here to-day that they were released for a definite time. When they are released they can do anything

(Testimony of W. H. Whalen.)

they see fit. When released they would probably say, "You will find me at such and such a place. I will be down at the bunk-house or at the hotel or getting lunch." At the expiration of one hour and thirty minutes. They are told, "You are released." They will say, "All right, I am going down and get some sleep," or, "All right I am going over to the lunch counter [190] and you will find me there when you want me." When these men were released they did not know when they would be called again. They might not be called for two hours or they might be called within an hour. The form is "You are released." That means that he is released from responsibility until called. It may be a release for thirty minutes, any length of time. We have released them for a period as short as twenty minutes. When a man is released, when he is notified he is released, he doesn't know anything more than that he is released. As far as I know that is true in regard to all these men involved in this case, and I am justified in saying that from my own knowledge in the usage in the transportation business. When these men were released for an hour and thirty minutes in these particular cases, that meant that they were released, that they were as free men as there is in the world, until the call-boy gets them again. The men would say, "I am going down and get some sleep," or he will say, "I will be there" or "here" or some other place. I am saying that from my own experience as an engineer.

(Testimony of W. H. Whalen.)

Cross-examination.

When a man is released at Colton he leaves and may be reached by telephone; in other words he is temporarily at home. He is turned loose. He simply gives us word where he could be found. He could go automobile riding, yes, but that would be a very unusual thing, but he could go automobile riding. He could go to a moving picture show or go and play ball and do anything he has a mind to. [191]

Redirect Examination.

I say this, that going automobile riding is an extraordinary case. I have never in my life heard of a man going automobile riding on a release. He could go, but there has got to be some understanding with him. He may say, "I will be at my home." Then he must be at his home. He must be somewhere. He might say, "I am released. I am going into the country for an automobile ride." He could go automobile riding if he would say, "Here, I leave at such a time. I will call you up and let you know where I am." It would be an extraordinary case, as I say. It is only drawing on my imagination to state that. In these particular cases when these men were released for one hour and thirty minutes they were as free as men could be. They can go anywhere they please, do as they please and be gone as long as they please. When notified they are released will say: "You will find me at such a place. I am going to the hotel." Or they may say, "I am going down and get some sleep," or "I am going to the

(Testimony of W. H. Whalen.)

lunch counter and you will find me there." If these men had gone and taken an automobile ride we would call somebody else if we could not find them. If these men had gone and taken an automobile ride and notified the man in charge that they would be found 25 miles out within an hour, we would not be able to get these men back at any minute if we wanted them in ten minutes, and if they were not there and they were not able to get them within the time needed we would call somebody else. If nobody else was available, there would be a delay. Of course those are impossible conditions. Yet the men have a right to go but [192] they would not lose their jobs. They would not be subject to suspension. We would take them to task about it. It would be a careless way to do, to go out in the country without saying where they would be. They should say, "I will be at such and such a place at such a time." If they were 50 miles away at such a time it would not be satisfactory to the railroad company. They should be where they could be called when wanted. This release is a matter of common sense. They are told, "Now you are released," and they say, "We will be found at such a place." The man wants to work, you know, he wants to do more work and the railroad company wants him, too, and the railroad company wants him to be where he is accessible when needed and wants him to tell them he will be there.

Recross-examination.

Very often when these men go into the dispatcher's office and he tells them they are released,

(Testimony of W. H. Whalen.)

it may be that the dispatcher himself does not know when these men will be needed again. He cannot look into the future any more than any one else. The men that work out of Los Angeles are required to live in Los Angeles. They would not be permitted to live in San Francisco if they pulled trains from Los Angeles to Yuma.

Mr. WALTER.—I offer in evidence U. S. Exhibit 10.

(Which said U. S. Exhibit 10 has been transported to this Court for inspection by this Court in accordance with Subdivision 4, Rule 14 of this court).

Testimony of L. G. Sloan, for Plaintiff.

L. G. SLOAN, witness called on behalf of plaintiff, being first duly sworn, testified as follows:

I am assistant superintendent of the Southern Pacific Company. I was such assistant superintendent at Los Angeles in February and March, 1914. I had supervision over the trainmen. There are certain trainmen who make what we call local runs, and there are other men who make what we call through runs. A through run is a train that would go through, such as a through freight east from here destined to El Paso. Local trains are [193] trains that do switching at all stations. We have local men that make Colton and Los Angeles, on those through trains that would run through Indio and probably up to Yuma. There were certain men that were assigned to certain classes of runs. All men are on what is known as a seniority list. The seniority list

(Testimony of L. G. Sloan.)

is their age in the service. The oldest man in the service has preference, in positions. A run is put on, or established, and it is up to bid for fifteen days and the men take their preference. If there were a run between Colton and Los Angeles, a local run, they will bid on that. After the bids are all in, the oldest man on the list who has bid for the run gets it. Through runs are what we call our chain gang crews. I know conductors Gibson and Lindley and engineers Richardson, Winter, Olwein, and Danfelter, and brakeman Kincaid, Courtney, Elmer Whitman, J. E. Pettijohn, MacBurney and Sutherland. These men ran on certain days in February and March between Los Angeles and Indio and Palm Springs. Their runs were from Los Angeles to Colton. These men were released at Palm Springs one day on account of the 16-hour law. They were assigned to what is known as a through run or chain gang and were not assigned to a local run. All trains have to have orders by which they are run. The time table train moves on its rights. They are known as regular trains. They do not have running orders but run on regular schedule orders. No. 242 is a regular train and is scheduled fom Los Angeles to El Paso via Indio. For first 242 there will be a train order. That is a section of a regular train. An order would be given to the engineer to run as a first section of that train. The first is ahead of the regular section. They run on the regular block signal on this division ten minutes apart as a rule. With regard to the extra trains, they run on what are

(Testimony of L. G. Sloan.)

called regular train orders. It is up to the train dispatcher starting an extra run from Los Angeles to Indio or Indio to Los Angeles to [194] have an order controlling its run all the way through at the time it starts out. The train dispatcher being the captain of his work, it is up to him to give the orders with reference to them as he sees fit. That was the system then and that is the system now to give the first running order out of here probably to Colton. If this train went on it would get another order when it got to Colton. Extra passenger trains are run on the same kind of orders. Regular passenger trains are run on time tables if they are regular scheduled trains.

Q. Now, Mr. Sloan, it is before the Court in this case that the crews involved in this case were released on what the carrier, or the Southern Pacific Company, has designated as a release of an hour and thirty minutes. In some instances it was ten minutes. In some cases it was exactly an hour. What was the system of release at Colton followed by the Southern Pacific Company during February and March of last year?

A. They were released from duty on their arrival until they were called to leave.

Q. Until they were called?

A. Yes. "Released until called" meant that they understood they were off duty. That they are not in any way employed. They are absolutely free. And they would be called when they would be needed, just the same as for their initial trip. The release

(Testimony of L. G. Sloan.)

was for an indefinite period. With regard to the crew running from Los Angeles to Indio, when that crew got to Indio it was released. With regard to the crew running from Indio to Los Angeles, when they arrived at Los Angeles they were released. They are at their terminal. They are through. The crews would not be **[195]** paid for their release at Indio, because that is their terminal and would not be paid for their release at Los Angeles because that is their home terminal, but they are paid for their release at Colton. They are paid for every minute they are at Colton. That is between their terminals. That is because they had not reached their destination. The release at Colton differed from the releases at their terminals in this: At Colton they are at the middle of their run. At their terminals they are at home. They go home just like you go home, when you get through your work, when at Colton they are only released from duty. They are not needed. On arrival of the train crew at Los Angeles from Indio, they register the time of their arrival. The register always shows the exact time of their arrival at River Station, Los Angeles. It shows the conductor's and engineer's name and the engine number and the loads it has and the empties it has and the tonnage. When the crew starts out on the trip the conductors register. The engineer and fireman only register at the roundhouse. That shows the hour they report for duty.

As a general thing the register shows the previous hours of rest they had before they reported for duty.

(Testimony of L. G. Sloan.)

I have here the registers for February and March. That is the engineers and fireman's register. I have the engineer's register for February 2, 1914, of Engineer Richardson. On that date his run was extra east 2784. His fireman was Durrance. The register shows their previous rest before they started was 14 hours—each day 14 hours. I have the register here for the 24th of February, the return trip from Indio to Los Angeles of Charles H. Winters and fireman George F. Hutchison. They registered at 2 A. M. on February **[196]** 24, and the register shows they rested 12 hours previous to that. I have a register here for March 8, 1914, of Charles H. Winters and fireman Ross. They registered at 2:25 A. M. on that day. Their previous rest before that was 12 hours each. I have the register for March, of Danfelter, engineer, and fireman, C. L. McKinley. They registered at 8 P. M., which shows that one of them had 39 hours rest previous and the other had 12. The conductors register out of River Station, at approximately the time when they reported for duty. This register does not show the previous hours of rest the conductor and brakeman had before they started out. We have another register for that, a mimeograph form, to show the hours of service. It was a kind of an extra precaution for the purpose of giving the company information as to the amount of rest they had before starting out. In case of a run from Indio in to Los Angeles the conductor would register his time of arrival at Los Angeles and the register would show the number of

(Testimony of L. G. Sloan.)

hours rest previous. Those registers are destroyed. The time it would take a train to run from Los Angeles to Colton would be according to the density of the traffic or tonnage they would have, the time of day they left and what they would have to contend with. We have some trains that go from here to Indio in four hours. Others take seven hours. The purpose of the release granted to employees at Colton is that the trains are in the yards there probably two hours and some times three and some times four hours and there is absolutely nothing for the crews to do and we want to give them a recreation. At times we have the crews there for a much longer time than two hours, sometimes not longer than twenty minutes. We would not release them for twenty minutes. **[197]** Anything less than an hour is too trifling. The release is for the purpose of rest and recreation because they had nothing to do. The yard crews there do the switching. That is where they ice cars and all perishable freight. The stops at Colton are made to arrange the trains for continuing on from that point. The cars had to be switched. Any perishable fruit had to be taken and iced. Some of it had to be precooled. We have a precooling plant that which cost something like 700,000. When shippers ship their fruit they ship it with the stipulation that it be iced or precooled, which keeps it in good condition until it reaches its destination. They drive all the warm air out and keep cool air in and keep it in its natural state. That takes time. It often takes three or four hours

(Testimony of L. G. Sloan.)

to take a car out of a train and precool it and put it back in. It was very often the case at that time that the time used from Los Angeles to Indio or Indio to Los Angeles was very near the 16 hour period. If the time allowed at Colton should not be counted, the time of duty of these crews in a number of cases would have been in excess of sixteen hours. It was an order that the crews be released. That was the system. We always released those crews at Colton. We would give them rest and recreation and of course they used that time at their leisure. When necessary within the 16 hours. On each day involved here these crews were working between Los Angeles and Indio, with conductor Gibson as conductor. His brakemen were Kincaid, Courtney and Wakeman. Between February 8 and March 8, Mr. Lindley's regular runs were the same with the exception of one when he made a trip to Mojave. Regularly he ran between Los Angeles and Indio and went as far as Yuma in some cases.

The Government rests. **[198]**

Testimony of L. G. Sloan, for Defendant.

L. G. SLOAN, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

I was on the stand a few minutes ago. Directing my attention to the date February 27, 1914, one of the charges of the United States against the Southern Pacific is working their men more than 16 hours on February 27. I have testified that I was assistant superintendent for the Los Angeles Division and

(Testimony of L. G. Sloan.)

as such handled the transportation. I remember the occasion of the flood of 1914.

Mr. WALTER.—Now, if the Court please, we have demurred to that answer as to that particular section of the—

The COURT.—Well, if the demurrer is sustained I will permit them to amend.

Q. (By Mr. GILBERT.) With reference to February 27th and the days previous to that time, you may tell the jury what the condition of your tracks was, beginning on about the 18th of February and from then on up until the 27th.

Mr. WALTER.—We object to that as immaterial. The statute says that in case of casualty, unavoidable accident or act of God, and where the delay is the result of causes not known to the officers or the crew at the time the crew left the terminal, the statute does not apply. Now, if his testimony is confined to this particular day, and it shows that this heavy rainfall and flood occurred after the crew left the terminal, we have no objection; but we do object to his testifying to the condition of the weather a week before the crew left the terminal. We think under the ruling of the United States Circuit Court of Appeals and other courts this does not apply unless these conditions arise after the crew leaves the terminal.

The COURT.—The statute is: "The provisions of this [199] act shall not apply in any case of casualty or unavoidable accident, or the act of God, nor where the delay was the result of a cause not known

(Testimony of L. G. Sloan.)

to the carrier or the officer or agent in charge of such employee at the time such employee left the terminal, and which could not have been foreseen."

Now, of course, if this flood and rain could have been foreseen, and they knew before the train left the terminal that this accident was going to happen, this act would not apply; no doubt about that. It is as plain as A, B, C. But I think that the evidence has got to be taken so that the jury can determine the facts. It is a question for the jury whether that is a fact or not. Now, a rain may have come and it may have poured down like in the days of Noah, but the flood may not have come until after the rain was over, and the tracks may not have been washed out until after the train left the terminal. We cannot tell until the evidence is put in.

Mr. WALTER.—Now, I suggest, Your Honor, that if a rain has fallen,—I understood him to ask as to the 18th or along about that time—

The COURT.—Well, you perhaps do not understand this country. The rain may start in on Monday, and it may rain Monday and Tuesday and Wednesday, and then on Thursday there will be a flood that will wash out bridges and tear up roads and do a good deal of damage, and this rain continuing all the time, the ground gradually gets soaked up, and you can't tell where the flood is coming from. These jurors all know about this country, and they will probably take into consideration their own knowledge in regard to those conditions in this country

(Testimony of L. G. Sloan.)

and these floods, with the proof that may be offered. [200]

Mr. WALTER.—It seems to me if the rain had fallen as far ahead as he suggests it could have been foreseen.

The COURT.—I will permit the question about the flood, and let the jury determine.

Mr. WALTER.—Exception.

(Last question read.)

Q. (By Mr. GILBERT.) Now, let your answer include the rainfall, as you remember it, and the direct damage to the equipment of the road.

Mr. WALTER.—Now, plaintiff desires to except to the admission of this testimony for the reason that the condition of the track on all these dates previous was known on the 27th day of February, 1915, and that that is in no way material to the question at issue, as to whether the train involved was delayed by a cause which could not have been foreseen at the time the crew left the terminal.

The COURT.—Now, suppose the rain had been falling for three or four days and the track was wet and soft, and the ground was soaked, and these trains leave the depot, and then there comes a cloudburst, or an unprecedented flood in some particular part of the valley, when it is easy to wash out the track or wash out the bridge: Don't you think the jury would have a right to take those things into consideration?

Mr. WALTER.—Well, it seems to me, Your Honor, if the track is already wet and soaked—

(Testimony of L. G. Sloan.)

The COURT.—Is it your idea they should not send out a train then?

Mr. WALTER.—Not at all, but if they send out trains under these conditions knowingly, unless something happens after the train leaves the terminal— [201]

The COURT.—Why, certainly something will have to happen after it leaves the terminal.

Mr. WALTER.—That is my point.

The COURT.—Well, they can't prove it all at once.

Mr. WALTER.—I understood the question to be as to the condition of the track through all these days.

The COURT.—The objection is overruled.

Mr. WALTER.—Exception.

(Last question, as amended by the succeeding answer, read to the witness.)

A. During that period we had very heavy rains, in fact one of the heaviest storms that has ever been since I have been here, in 1910.

Q. (By Mr. WALTER.) During which period?

A. The period asked for; after the 18th.

Q. After the 18th and up until when?

Mr. GILBERT.—Up to the 27th.

Mr. WALTER.—I understood you to say the time previous. You didn't restrict it to any particular time.

A. (Continuing.) And especially between Colton and Los Angeles. We were tied up by washouts in

(Testimony of L. G. Sloan.)

there. The train sheet shows the part of the division on the 27th where we hadn't got the tracks clear yet in the vicinity of Colton. Regular trains annulled account washouts. That is in the vicinity of Colton. I remember very distinctly I was in that section, and it was the fourth night that I got into bed at El Monte. During these four days and four nights I was fixing up washouts, side washes, *bead* breaks, difficulties and everything between Colton and El Monte. The morning of the 26th was the first day we got over El Monte bridge, I think, for four days. The floods washed out the approaches and took out—well, I distinctly remember setting up four bents. **[202]**

The morning of the 26th was the first time I got across El Monte bridge. On the 26th and 27th we moved more equipment than usual. We had to move all of this delayed freight. The storms had made the roadbed very soft and we had all kinds of slow orders, safety first being the slogan. I remember very distinctly we had one slow order in east of Ontario where the trains were not permitted to run over 25 miles an hour through that sandy country. It washed everything. We were two nights there trying to get trains for 25 miles along in there. The road bed on the side was all washed out and we would put ballast and ties and everything along just to get over it, and I see by the train sheet on the 27th that every train coming along there lost—a passenger train would lose as much as one hour from Colton to Los Angeles on account of track conditions.

(Testimony of L. G. Sloan.)

A freight train would lose—I would say if they got over to Colton from Los Angeles in less than three hours it would be an extra run. You see they have to keep clear of all those passenger trains. Now here is the Golden State Limited on the 27th. He was 50 minutes making the 30 minute run from Colton over towards Ontario on the 27th. That was the day that the other freight train was operated. All trains show a delay and lost time in there. The dispatcher's notes show the time lost on account of soft tracks, slow orders, etc. It was necessary to restrict the speed of all trains to that of safety in that vicinity, and it was many days before we got the track fixed up so that they could make anything like reasonable speed. There was no way by which it could be definitely determined by the dispatcher as to what time **[203]** could be made on this soft track. That was a matter which was necessarily placed largely in the discretion of the crew in actual operation. When the freight train under those conditions left Los Angeles the dispatcher couldn't tell whether he could move to Colton in six hours or nine hours. In the first place the track conditions and the slow trains he had to meet and his delays waiting for them and then other delays waiting for him when he got started over this slow trip. It was awfully slow work and delays trains something terrible. So far as I am concerned, I know of no way of foreseeing this track difficulty. I couldn't tell how much they were going to loose.

(Testimony of L. G. Sloan.)

Cross-examination.

I couldn't tell when we had the most rain. It rained day and night in there most of the time. I couldn't tell up to what time. I was out there wet from top to bottom. I was trying to fill up the holes and wasn't keeping weather records. There was quite a bit of rain on the 18th. It was something terrible. The bridge at El Monte was gotten in shape on the morning of the 26th. The flood was all about the same for several days, and part of the highest flood washed out at El Monte. The flood doesn't come and then go just at one time, but it probably rains to-night and a terrible flood and then to-morrow it will go down a little and then it will rain again. I know that along about that time we cribbed up one bridge there three times near San Gabriel. **[204]**

If the rain ceased along about the 23d or 24th, then the highest crest of the flood would have been before the 26th. I do not know exactly when the rain ceased. I kept a diary, but my diary does not show as to the rain.

Mr. GILBERT.—Your Honor, the Weather Bureau records will show that, and I will admit them without any proof of their correctness at all.

Mr. WALTER.—I offer in evidence U. S. Exhibit 11.

(Which said U. S. Exhibit 11 has been transported to this court for inspection by this court in accordance with Subdivision 4, Rule 14 of this court.)

(Testimony of L. G. Sloan.)

The train left Indio for Los Angeles on February 27th at 3:10 A. M. and was tied up at Los Angeles at 8:40 P. M. of that day. I do not know of anything that occurred subsequent to the departure of that train from Indio that affected its movement, except track conditions, and the condition of the track was known at the time the crew left the terminal, in a general way, but the condition of the track was not such that we could tell the exact running time. [205]

Testimony of J. B. Lippincott, for Defendant.

J. B. LIPPINCOTT, witness called on behalf of the defendants, being first duly sworn, testified as follows:

My name is J. B. Lippincott. I am a civil engineer. I have been a resident of Southern California since 1891 and have practiced my profession continuously in Southern California during that length of time. I was on the Board of Engineers to study the flood conditions of 1914 for the county. We devoted about a year and a half's time to that work, and made our report in August of this year. During my employment and the practice of my profession as civil engineer, I have had occasion to keep a record for my personal benefit of the rainfall of Southern California since 1891, and have published documents concerning them. I am familiar with flood conditions from 1891 up to date. I remember the occasion of the flood which fell beginning on February 18th and continuing up until the 21st or 22d of February, 1914. I had occasion to

(Testimony of J. B. Lippincott.)

observe the force and effect of that flood. I had occasion to compare it with other floods which have fallen in Southern California during my twenty-two years' residence here. Directing my attention to the precipitation of water which fell between the 18th of February and the 24th of February, 1914, the character of that flood as compared with other floods, bearing in mind the immediate precipitation, that is, the volume of water which fell within a restricted period as compared with other periods of a like time in years past, I would say that the rainstorm of February, 1914 according to the records of the Weather Bureau here began with great violence on the 18th of February at Los Angeles and extended until [206] the 21st of February, both inclusive. The floods that were produced by that storm in the San Gabriel Valley and in that region, according to observations which I personally made, and which were made under my immediate direction, were the greatest flood discharges that I have ever known of in this portion of California or in any other portion of California, when you consider the flood in terms of flood discharge per square mile of rain space, as we had a very, very wet month preceding, with immense floods in January. This was followed by a group of very heavy rain storms in February, falling on mountain drainage basins and valleys that were already saturated with moisture, and it produced not only great volumes of flood but great damage and washing away of river banks and so on generally. The damage on that account was very great. The region I refer to as the

(Testimony of J. B. Lippincott.)

San Gabriel Valley is the drainage basin beginning at Pasadena and extending, say to San Dimas. That portion of the mountain drainage basin. And discharging through the narrows of the San Gabriel River near El Monte. We determined the flood discharge from practically all of those drainage basins, including the flood discharge at El Monte. El Monte is on the Southern Pacific Railroad east of here. When a flood falling on the 21st of February, say, as a matter of illustration, at 3 o'clock in the afternoon on the 21st of February—the actual and direct effect of that flood does not end with the flood itself. It is very different in drainage basins. If you take a drainage basin or catchment basin of a small stream, that is, very short [207] and precipitous, you get a flood very quickly. You would get one from the Rubio Canyon or some of those other canyon or drainage basins between Pasadena and Azusa, such a flood, but when you come to the San Gabriel River, which is a drainage basin of 220 square miles in area, these floods do not respond as quickly, and they are drawn out longer in duration. If you have a country that is fairly saturated with water by protracted rains, the floods in lessor volumes are pretty well sustained.

Cross-examination.

The heaviest rains fell at Los Angeles, for instance, according to the Weather Bureau records, February, 1914, there was 4.26 inches fell on the 18th of February; .94 inches on the 19th; 1.69 on the 20th; .15 on the 21st; none on the 22d; none on the 23d; and none for the balance of the month. That is, at the Los Angeles

(Testimony of J. B. Lippincott.)

station. What we did with the flood discharge was to determine what the maximum flood waves have been during those times. The exact time when this maximum flood wave passed by we did not determine. Going on the theory that the heaviest rain fell on the 18th —going on the theory that about four inches of rain fell on that day, and the amounts I have named there on the three subsequent days, I should think the height of that flood was reached possibly within 12 or 24 hours at El Monte. Otherwise I do not know when the highest point of that flood was reached. Undoubtedly it occurred before the 22d of February. There is a Bureau of the Government with officials in [208] this building—the United States Geological Survey—that keep daily records of the flood of streams and the exact hours and days when these maximum flood waves occur can be determined. I am having those records copied now and will have them by 2 o'clock.

Redirect Examination.

I have got here the daily stream discharge of the San Gabriel River at Azusa as compiled by the United States Geological Survey, the hydrographic branch. Refreshing my recollection from it and testifying as to the conditions on the dates from the 18th of February up until the 26th or 27th, I would give it on the 17th of February. The flow of the river—

Mr. WALTER.—For the purpose of the record, I would like it to show, your Honor, that I object and have an exception.

(Testimony of J. B. Lippincott.)

The COURT.—The objection is overruled.

Mr. WALTER.—Exception.

WITNESS.—(Continuing.) The flow of the river on the 17th of February, the day prior to the rain, was 282 cubic feet per second; on the 18th it was 1750—that is the day of the big rain; on the 19th, 4540; on the 20th, 11,800; on the 21st, 8,480; on the 22d, 6,620; on the 23d, 4,710; on the 24th, 4,180; on the 25th, 2,950; on the 26th, 2,840; on the 27th, 2,500; on the 28th, 2,200. That is cubic feet per second. A cubic foot per second is 50 miner's inches. That was a very unusual flow for that stream. As far as I now remember it, that is the biggest flow ever measured on that river. I personally established that gauging station in 1896, and since that time, so far as I can now remember, that was the heaviest [209] flow that has ever gone through there since 1896.

Mr. GILBERT.—We offer in evidence Defendant's Exhibit "A." (Which said Defendant's Exhibit "A" has been transported to this Court for inspection by this Court in accordance with Subdivision 4, Rule 14 of this court.)

Cross-examination.

The flow was heaviest on the 20th, and it gradually reduced down until the 28th. On the 27th it was 2500 cubic feet per second. The condition of the stream was much better on the 27th than on the 20th.

There was no further or additional testimony introduced at the trial. The cause was then argued, and submitted, thereupon the Court gave to the jury the following instructions: [210]

Instructions of the Court to the Jury.

This is a civil action and not a criminal action. The complaint is divided into thirty counts, or separate causes of action, each of which alleges a separate violation of the Statute, which I will hereafter refer to. The defendant, in its answer, has denied certain allegations in the complaint. That is to say, the defendant has denied that it has violated the law in regard to keeping its employees on duty longer than sixteen consecutive hours in any period of twenty-four hours, or longer than sixteen hours in the aggregate in any twenty-four hour period.

As to the issues in the complaint denied by the answer. The burden of proving the same is upon the plaintiff. That is to say, the plaintiff must sustain such allegations by a preponderance of the evidence. A preponderance of the evidence does not mean most of the witnesses or most evidence, but it means evidence which satisfies you as to the weight thereof. In addition to the answer denying the allegations in the complaint, the defendant has also pleaded as to count 7, 8, 9, 10, 11 and 12, a special answer, which the defendant claims brings the case within the proviso of the Statute which I will hereafter refer to. The defendant alleges that the delay and the retention of the employees for the length of time they were retained in service at the time in question, was either caused by the act of God, or was the result of a cause not known to the defendant or its officer or agent at the time the employees left a terminal.

You need not consider this special answer until you

have first determined that the plaintiff has sustained the burden of proving the facts alleged in the complaint [211] and denied by the answer. If you determine primarily that the plaintiff has sustained the burden of proof concerning the facts alleged in the complaint, then you may consider this further or special answer of the defendant. In considering this further or special answer, the defendant has to sustain the burden of proof. In other words, if the plaintiff has sustained the burden of proof as to the allegation in the complaint, and you have to consider this special answer, then you must consider whether or not the weight of the evidence preponderates in favor of this special answer.

You are instructed that by the term "act of God" is meant those effects and occurrences which proceed from natural causes and cannot be anticipated and guarded against or resisted, such as unprecedented storms or freshets, lightning, earthquake, etc. On this defense, as I have heretofore stated to you, the defendant assumes the burden of proof to the extent that it must prove by a preponderance of evidence that the storm was of such violence and unprecedented nature that no ordinary and reasonable amount of care would have prevented the delay. Therefore, if the plaintiff has established by a preponderance of the evidence that the defendant violated the hours of service law, as alleged in the complaint, then the burden of the proof is upon the defendant to prove by a preponderance of evidence that the storm in question was of sufficient violence to have caused the delay alleged in the complaint.

The defendant also claims that the retention of the men in service was the result of the track being soft [212] by reason of the floods, and that it could not be foreseen before the men left the terminal that this delay would occur. On that branch of the answer the defendant must also show by a preponderance of the evidence that such was the fact, and that such soft track was a cause not known to the defendant or its officers or agents in charge of such employees at the time the said employees left the terminal, and it could not have been foreseen.

The law which the plaintiff claims the defendant violated, in so far as it is necessary for you to consider the same, is as follows:

> "That it shall be unlawful for any common carrier, its officers or agents, subject to this Act to require or permit any employee subject to this Act to be or remain on duty for a longer period than sixteen consecutive hours, and whenever any such employee of such common carrier shall have been continuously on duty for sixteen hours, he shall be relieved and not required or permitted again to go on duty until he has had at least ten consecutive hours off duty; and no such employee who has been on duty sixteen hours in the aggregate in any twenty-four hour period, shall be required or permitted to continue, or again go on duty without having had at least eight consecutive hours off duty.

There is a proviso in the law which reads as follows:

> "Provided, That the provisions of this Act shall not apply in any case of casualty or un-

avoidable accident, or the act of God; nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of such employee at the time said employee left a terminal, and which could not have been foreseen": [213]

You will see that the law contemplates two classes of service as to the time employed,—one class where there are sixteen consecutive hours of labor within a period of twenty-four hours. In such a case there are ten consecutive hours off duty. The other class of service is where there are sixteen hours of labor, in the aggregate, in any twenty-four hour period, in which case there must be eight consecutive hours off duty. The law, therefore, contemplates that there may be a class of service where there may be a break in the service of a shorter duration than the prescribed periods of rest of ten and eight hours, respectively. Where the service is for sixteen hours in the aggregate in any twenty-four hour period, that is where the service is not sixteen consecutive hours, the off-duty periods must be such, between the periods of service, that the employee may have a reasonable opportunity for rest or recreation, as I will more particularly point out to you hereafter.

The plaintiff claims that this case falls within the first class above designated, while the defendant claims that it falls within the second class. That is to say, the defendant claims that the men were not on duty more than sixteen hours in the aggregate in the twenty-four hour period, while the plaintiff claims

the men were on duty more than sixteen consecutive hours, or sixteen hours in the aggregate in a twenty-four hour period. [214]

The plaintiff does not claim that the provision of the law in regard to having ten consecutive hours off duty, was violated, nor that the defendant violated the provision of the Act concerning eight hours off duty, as above set forth. The defendant does not claim that the period for which the employee was released from duty at Colton could either be counted as a part of the ten hours off duty or of the eight hours off duty, as set forth in the law. The defendant contends that the time of release from duty, at Colton, was such a break in the hours of service that it brings the case within the second class of cases where the hours of duty shall not be more than sixteen hours in the aggregate, and claims that there were not more than sixteen hours of duty performed by the employee, in the twenty-four hour period.

Under the Hours of Service Act, which has been partially read to you, when several employees are kept on duty beyond the specified time of sixteen hours, a separate penalty is incurred for the detention of each employee, although by reason of the same delay of a train.

Each overworked railway employee presents towards the public a distinct source of danger, and a distinct wrong to the employee.

The wrongful act, under the Statute, is not the delay of the train, but the retention of the employee; and the principle that under one act having several conse-

quences, which the law seeks to prevent there is but one liability attached thereto, does not apply. [215]

An employee who is waiting for the train to move, and liable to be called, and who is not permitted to go away, is on duty within the meaning of the Hours of Service Act.

The penalty under the Act, not being in the nature of a compensation to the employee but punative and measured by the harm done, is to be determined by the Judge, and not by the jury. So if you should find for the plaintiff you need not consider the penalty.

There may be cases where the release from duty of an employee of a railroad company, is so brief, or where the circumstances are such that the Judge may say that the claim that the continuity of the hours of service has been broken, would be a mere sham and a pretense, and the Court would not recognize such a case as being a compliance with the law. On the other hand, there may be cases where the release from the service of the employee, is of such length of time, and is surrounded by such circumstances that the Court could say that no fair-minded man could dispute the statement that the employee had a fair and reasonable opportunity for rest and recreation, and that the law in such cases had been complied with. Then there may be other cases, where neither of these extremes exist; cases that occupy the middle ground between these extremes; cases where, although there may not be any dispute as to the facts of the case, it is necessary to apply the proven circumstances to the situation in order to de-

termine whether or not the law has been complied with. I have decided that this case occupies the third situation described. That is to say, it falls within that twilight zone between the two extremes, as above described. I therefore instruct [216] you that you are to apply the probative facts and the proven circumstances in this case, to the situation, and determine whether or not, during the time the employees were released, they had a reasonable and fair opportunity for rest and recreation.

In determining whether or not the men had a reasonable opportunity for rest and recreation during the time that they were released from duty, you shall take into consideration all the facts and circumstances connected with such release; whether it was a release in good faith, and whether or not the men had, during the time they were released, a right to do as they pleased; whether they were masters of their own time, and whether they really had a substantial and opportune period of rest. If you find, as aforesaid, that the release from duty at Colton, was a break in the hours of service, within the meaning of the law as I have explained it to you, then you should find for the defendant upon that issue, but if, on the other hand, you should find that the employees were not released in such a manner that they were masters of their own time and did not have a reasonable and fair opportunity for rest and recreation, you should find for the plaintiff upon that issue.

The parties have entered into a stipulation, in writing, concerning many facts involved in this case. This stipulation will be handed to you for you to

take and to have with you during your consultation.

This stipulation, insofar as it covers the case, is binding upon both parties and you cannot consider that anything in it is erroneous. In addition to this stipulation of facts, certain evidence has been introduced, which you will consider in connection with such stipulation, but you cannot regard such evidence as being contrary to such stipulatioin. [217].

Thereupon the plaintiff requested the following instructions, which were refused by the Court, to which refusal of the Court the plaintiff then and there duly excepted; the grounds for said exceptions as given at that time are set out in full in the assignment of errors filed herein:

I.

You are instructed to find for the plaintiff on each of the first six causes of the plaintiff's petition.

Said plaintiff then and there, while the jury was in the box, duly excepted to the Court's refusal to give the foregoing instruction.

II.

You are instructed to find for the plaintiff on each of the counts seven to twelve. inclusive, of the plaintiff's petition.

Said plaintiff then and there, while the jury was in the box, duly excepted to the Court's refusal to give the foregoing instruction.

III.

You are instructed to find for the plaintiff on each of the counts thirteen to eighteen, inclusive, of the plaintiff's petition.

Said plaintiff then and there, while the jury was

in the box, duly excepted to the Court's refusal to give the foregoing instruction. [218]

IV.

You are instructed to find for the plaintiff on each of the counts nineteen to twenty-four, inclusive of the plaintiff's petition.

Said plaintiff then and there, while the jury was in the box, duly excepted to the Court's refusal to give the foregoing instruction.

5.

You are instructed to find for the plaintiff on each of the counts twenty-five to thirty, inclusive, of plaintiff's petition.

Said plaintiff then and there, while the jury was in the box, duly excepted to the Court's refusal to give the foregoing instruction.

6.

If you believe that the so-called releases at Colton, varying from one hour to one hour and thirty minutes were not in the nature of releases for a definite and fixed time, you are instructed that such releases did not break the continuity of the service of the employees involved. A release for an indefinite period, although it transpired that such period of inactivity amounted to as much as one hour and thirty minutes, did not break the continuity of service, within the meaning of the statute.

Said plaintiff then and there, while the jury was in the box, duly excepted to the Court's refusal to give the foregoing instruction. [219]

7.

If you believe that when the crews involved

reached Colton they had not reached their terminal or the end of their run, and that they still remained the crews of their respective trains, and that the so-called releases at said point were not for a definite and fixed period, you are instructed that such releases did not effect a break in the continuity of their service.

Said plaintiff then and there, while the jury was in the box, duly excepted to the Court's refusal to give the foregoing instruction.

8.

For a release to constitute a break in the service, it must be given before the period claimed begins, and must be for a definite time.

Said plaintiff then and there, while the jury was in the box, duly excepted to the Court's refusal to give the foregoing instruction.

9.

A release to break the continuity of service must be such that all the facts and surrounding circumstances will permit of the employees being absolutely free to come and go at will, and not so restricted that the complete enjoyment of such release may be hampered by the fear that such employee may be wanted by his employer at some particular place during such time of release for duty in connection with his regular work. It is not sufficient that the carrier [220] state to the employees that they are released and free to go wherever they choose, when the employee at the same time is given to understand that he shall keep himself in readiness to respond whenever called for or needed to resume regular duty.

Said plaintiff then and there, while the jury was in the box, duly excepted to the Court's refusal to give the foregoing instruction.

10.

As to counts seven to twelve, inclusive, you are instructed that the heavy rains and unprecedented floods occurring on the dates shown did not excuse the carrier for keeping the employees involved on duty in excess of sixteen hours.

Said plaintiff then and there, while the jury was in the box, duly excepted to the Court's refusal to give the foregoing instruction.

11.

You are instructed that for a casualty, unavoidable accident, or act of God to warrant service of employees engaged in or connected with the movement of trains in excess of sixteen hours, such cause of delay must have arisen subsequent to the time such employees left their initial terminal.

Said plaintiff then and there, while the jury was in the box, duly excepted to the Court's refusal to give the foregoing instruction. [221]

12.

You are instructed that the bad condition of the defendant's railroad track, bridges and roadbed on February 27, 1914, due to the heavy rains and unprecedented floods arising on February 18, 19, 20, 21, and 22, does not justify the defendant in keeping on duty in excess of the sixteen hour period a crew who left their initial terminal at Los Angeles on said day of February 27, 1914.

Said plaintiff then and there, while the jury was in

the box, duly excepted to the Court's refusal to give the foregoing instruction.

13.

You are instructed that if you find the defendant guilty of the counts involved, you have nothing whatever to do with the fixing of the amount of the penalty for the violation; that the matter of assessing the penalties is entirely for the consideration of the Court, and your duty only is to find whether or not the employees made the basis of the various thirty counts of the plaintiff's petition, were or were not on duty in excess of sixteen hours.

Said plaintiff then and there, while the jury was in the box, duly excepted to the Court's refusal to give the foregoing instruction. [222]

Thereupon the jury returned a verdict in favor of the defendant in words and figures as follows:

In the District Court of the United States in and for the Southern District of California Southern Division.

No. 345—CIVIL.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
Defendant.

Verdict.

We, the jury in the above-entitled cause, find in favor of the defendant, Southern Pacific Company, a corporation.

Los Angeles, Cal., Oct. 27, 1915.

GEO. F. GUY,
Foreman. [223]

Order Settling and Allowing Bill of Exceptions.

IT IS HEREBY STIPULATED that the foregoing may constitute a bill of exceptions of the above-entitled cause and that the same may be settled by the judge who tried the same.

Dated this 8 day of April, 1916.

ALBERT SCHOONOVER,
United States Attorney,
ROBERT O'CONNOR,
Assistant U. S. Attorney,
Attorneys for Plaintiff.
HENRY T. GAGE and
W. I. GILBERT,
Attorneys for Defendant.

The foregoing bill of exceptions, containing all of the evidence offered and introduced at the trial of said cause, necessary to a review of the said cause on this appeal, and the instructions of the Court to the jury, with the plaintiff's exceptions thereto, and containing all of the proceedings at the trial of the said cause, is a true and correct bill of exceptions, and the time for filing plaintiff's proposed bill of exceptions and defendant's amendments thereto and for settling of said bill of exceptions having been duly extended by order of this court, the said bill of exceptions is hereby settled and allowed and ordered to be filed.

Dated this 8th day of April, 1916.

OSCAR A. TRIPPET,
District Judge. [224]

[Endorsed]: No. 345—CIVIL. In the District Court of the United States for the Sou. Dist. of California, Southern Division. The United States of America vs. The Southern Pacific Company. Bill of Exceptions. Filed Apr. 8, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. [225]

In the District Court of the United States, in and for the Southern District of California, Southern Division.

No. 345—CIVIL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation, et al.,

Defendants.

Petition for Writ of Error.

The United States of America, plaintiff in the above-entitled cause, feeling itself aggrieved by the verdict of the jury, and judgment of the Court, entered on the 30th day of October, 1915, comes now by Albert Schoonover, United States Attorney, and Robert O'Connor, Assistant United States Attorney, its attorneys, and files herewith an assignment of errors and petitions said Court for an order allowing said plaintiff to procure a writ of error to the Honorable, The United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of

the United States in that behalf made and provided; and that upon the filing of the said writ of error in the clerk's office of the United States District Court for the Southern District of California, Southern Division, at Los Angeles, California, all further proceedings in this Court be suspended and stayed until the termination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit. [226]

And your petitioner will ever pray.

Dated March 7, 1916.

ALBERT SCHOONOVER,
United States Attorney,
ROBERT O'CONNOR,
Assistant United States Attorney.
Attorneys for Plaintiff.

[Endorsed]: No. 345—Civil. In the District Court of the United States for the Sou. Dist. of California Southern Division. United States of America vs. Southern Pacific Company. Petition for Writ of Error. Filed Mch. 7, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy. [227]

In the District Court of the United States, in and for the Southern District of California, Southern Division.

No. 345—CIVIL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY,

Defendant.

Assignments of Error.

Comes now the United States of America, plaintiff in the above-entitled cause, and files the following assignments of error upon which it will rely in its prosecution of a writ of error in the above-entitled cause, petition for which said writ of error to review the judgment of this Honorable Court, made and entered in said cause on the 29th day of October, 1915, it files at the same time with this assignment.

Assignment No. 1.

That said United States District Court for the Southern District of California, Southern Division, erred in overruling plaintiff's demurrer to defendant's amended answer.

Assignment No. 2.

That said United States District Court for the Southern District of California, Southern Division, erred in overruling plaintiff's demurrer to defendants first amended answer. [228]

Assignment No. 3.

That said United States District Court for the

Southern District of California, Southern Division, erred in overruling plaintiff's demurrer to defendant's second amended answer.

Assignment No. 4.

That the verdict of the jury is not sustained by sufficient evidence.

Assignment No. 5.

That the verdict of the jury is contrary to the evidence.

Assignment No. 6.

That the verdict of the jury is contrary to the law.

Assignment No. 7.

That the court erred in refusing to give plaintiff's requested instruction No. 1, to wit:

"You are requested to find for the plaintiff on each of the first six counts of the plaintiff's declaration."

Assignment No. 8.

That the court erred in refusing to give plaintiff's requested instruction No. 2, to wit:

"You are requested to find for the plaintiff on each of the counts seven to twelve, inclusive, of the plaintiff's declaration." [229]

Assignment No. 9.

That the Court erred in refusing to give plaintiff's requested instruction No. 3, to wit:

"You are requested to find for the plaintiff on each of the counts thirteen to eighteen, inclusive, of the plaintiff's declaration."

Assignment No. 10.

That the Court erred in refusing to give plaintiff's requested instruction No. 4, to wit:

"You are requested to find for the plaintiff on each

of the counts nineteen to twenty-four, inclusive, of the plaintiff's declaration."

Assignment No. 11.

That the Court erred in refusing to give plaintiff's requested instruction No. 5, to wit:

"You are requested to find for the plaintiff on each of the counts twenty-five to thirty, inclusive, of the plaintiff's declaration."

Assignment No. 12.

That the Court erred in refusing to give plaintiff's requested instruction No. 6, to wit:

"If you believe that the so-called releases at Colton, varying from one hour to one hour and thirty minutes were not in the nature of releases for a definite and fixed time, you are instructed that such releases did not break the continuity [230] of the service of the employees involved. A release for an indefinite period, although it transpired that such period of inactivity amounted to as much as one hour and thirty minutes, did not break the continuity of service within the meaning of the statutes."

Assignment No. 13.

That the Court erred in refusing to give plaintiff's requested instruction No. 7, to wit:

"If you believe that when the crews involved reached Colton they had not reached their terminal or the end of their run, and that they still remained the crews of their respective trains, and that the so-called releases at said point were not for a definite and fixed period, you are instructed that such releases did not effect a break in the continuity of their service."

Assignment No. 14.

That the Court erred in refusing to give plaintiff's requested instruction No. 8, to wit:

"For a release to constitute a break in the service, it must be given before the period claimed begins, and must be for a definite time."

Assignment No. 15.

That the Court erred in refusing to give plaintiff's requested instruction No. 9, to wit: [231]

"A release to break the continuity of service must be such that all the facts and surrounding circumstances will permit of the employees being absolutely free to come and go at will, and not so restricted that the complete enjoyment of such release may be hampered by the fear that such employee may be wanted by his employer at some particular place during such time of release for duty in connection with his regular work. It is not sufficient that the carrier state to the employees that they are released and free to go wherever they choose, when the employee at the same time is given to understand that he shall keep himself in readiness to respond whenever called for or needed to resume regular duty."

Assignment No. 16.

That the Court erred in refusing to give plaintiff's requested instruction No. 10, to wit:

"As to counts seven to twelve, inclusive, you are instructed that the heavy rains and unprecedented floods occurring on the dates shown did not excuse the carrier for keeping the employees involved on duty in excess of sixteen hours."

Assignment No. 17.

That the Court erred in refusing to give plaintiff's requested instruction No. 11, to wit:

"You are instructed that for a casualty, unavoidable accident, or act of God to warrant service of employees [232] engaged in or connected with the movement of trains in excess of sixteen hours, such cause of delay must have arisen subsequent to the time such employees left their initial terminal."

Assignment No. 18.

That the Court erred in refusing to give plaintiff's requested instruction No. 12, to wit:

"You are requested that the bad condition of the defendant's railroad track, bridges and road-bed on February 27, 1914, due to the heavy rains and unprecedented floods arising on February 18, 19, 20, 21 and 22, does not justify the defendant in keeping on duty in excess of the sixteen-hour period a crew who left their initial terminal at Los Angeles on said day of February 27, 1914."

And upon the foregoing assignments of error and the record in the said cause, the plaintiff prays that said judgment may be reversed.

ALBERT SCHOONOVER,
United States Attorney.
ROBERT O'CONNOR,
Assistant U. S. Attorney.

[Endorsed]: No. 345—Civil. In the District Court of the United States for the Sou. Dist. of California, Southern Division. United States of America vs. Southern Pacific Company. Assignments of Error.

Filed Mch. 7, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy. [233]

In the District Court of the United States, in and for the Southern District of California, Southern Division.

No. 345—CIVIL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation, et al.,

Defendants.

Order Allowing Writ of Error.

Upon motion of Albert Schoonover, United States Attorney, and Robert O'Connor, Assistant United States Attorney, attorneys for plaintiff, and upon filing a petition for writ of error, and an assignment of errors,

IT IS ORDERED that a writ of error be, and it is hereby allowed to have reviewed in the United States Circuit Court for the Ninth Circuit the verdict and judgment heretofore entered herein.

Dated March 7, 1916.

OSCAR A. TRIPPET,

Judge.

Service of the above order is hereby admitted, and a copy thereof received, this 7th day of March, 1916.

HENRY T. GAGE and
W. I. GILBERT,
Attorneys for Defendants. [234]

[Endorsed]: No. 345—Civil. In the District Court of the United States for the Sou. Dist. of California, Southern Division. United States of America vs. Southern Pacific Company. Order allowing writ of error. Filed March 7, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy. [235]

In the District Court of the United States of America, Southern District of California, Southern Division.

No. 345—CIVIL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY,

Defendant.

Praecipe for Transcript.

To the Clerk of the Above Court:

Sir: Please issue a certified copy of the record in the above-entitled cause, consisting of the papers following:

1. Complaint.
2. Answer.
3. Demurrer.
4. First Amended Answer.
5. Demurrer to First Amended Answer.
6. Second Amended Answer.
7. Demurrer to Second Amended Answer.
8. Verdict.
9. Judgment.

10. Instructions given.
11. Plaintiff's Requested Instructions.
12. Motion for new trial.
13. Bill of Exceptions.
14. Petition for Writ of Error.
15. Assignments of error. [236]
16. Writ of Error.
17. Order allowing Writ of Error.
18. Citation in Error.

Said record to be certified under the hand of the clerk and the seal of the above court.

ALBERT SCHOONOVER,
United States Attorney.
ROBERT O'CONNOR,
Assistant U. S. Attorney.

[Endorsed]: No. 345—Civil. In the District Court of the United States for the Sou. Dist. of California, Southern Division. United States of America, vs. Southern Pacific Company. Praecipe for Transcript. Filed Mch. 7, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy. [237]

In the District Court of the United States, in and for the Southern District of California, Southern Division.

No. 345—CIVIL.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

SOUTHERN PACIFIC COMPANY,
Defendant.

Certificate of Clerk U. S. District Court.

I, Wm. M. Van Dyke, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing two hundred and thirty-seven (237) typewritten pages, numbered from 1 to 237, inclusive, and comprised in one (1) volume, to be a full, true and correct copy of the Complaint, Answer First Amended Answer, Demurrer to First Amended Answer, Second Amended Answer, Demurrer to Second Amended Answer, Verdict, Judgment, Instructions Given by the Court, Instructions Requested by Defendant, Motion for New Trial, Bill of Exceptions, Petition for Writ of Error, Assignments of Error, Order Allowing Writ of Error, and Praecipe for Transcript of Record on Writ of Error in the above and therein-entitled action, and that the same together constitute the record in return to the annexed Writ of Error as specified in the said Praecipe for Transcript filed in my office on behalf of The United States of America, the Plaintiffs in Error herein, by their attorneys of record.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed the seal of said District Court for the Southern District of California, Southern Division, this 21st day of April, in the year of our Lord one thousand nine hundred and sixteen,

and of our Independence the one hundred and fortieth.

[Seal] WM. M. VAN DYKE,
Clerk of the District Court of the United States of America, in and for the Southern District of California,

By Leslie S. Colyer,
Deputy Clerk. [238]

[Endorsed]: No. 2790. United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, Plaintiff in Error, vs. The Southern Pacific Company, a Corporation, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Southern District of California, Southern Division.

Filed May 3, 1916.

F. D. MONCKTON,
Clerk of the United States, Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

United States Circuit Court of Appeals, for the Ninth Circuit.

No. 345—CIV.

UNITED STATES OF AMERICA,
Plaintiffs in Error,

vs.

THE SOUTHERN PACIFIC COMPANY,
Defendant in Error.

Order Extending Time to and Including July 1, 1916, to File Record and Docket Cause.

Good cause appearing therefor, it is hereby ordered that the time within which the plaintiffs in error in the above-entitled action may file record and docket cause in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same hereby is extended to and including the 1st day of July, 1916.

Los Angeles, 3/28, 1916.

TRIPPET,
District Judge.

[Endorsed]: No. 2790. United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, Plaintiffs in Error, vs. The Southern Pacific Company, Defendant in Error. Order Extending Time to Docket Cause and File Record. Filed Apr. 3, 1916. F. D. Monckton, Clerk. Refiled May 3, 1916. F. D. Monckton, Clerk.